8A Am. Jur. 2d Bail and Recognizance § 86

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VII. Amount of Bail or Obligation in Lieu of Bail

A. In General

§ 86. Amount of bail or obligation in lieu of bail, generally; discretion of court

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 51

Forms

Forms relating to orders setting bail, generally, see Am. Jur. Pleading and Practice Forms, Bail and Recognizance [Westlaw®(r) Search Query]

Conditions of pretrial release[1] may include a reasonable bail.[2]

Bail should be fixed according to the circumstances of each case.[3] Even where bail is a matter of right, it is a judicial function to determine the amount of bail required.[4] The matter is generally within the trial court's discretion,[5] subject to the constitutional prohibition against excessive bail.[6] While a statute stating rules for fixing the amount of bail may serve as a guide for the exercise of that discretion,[7] it may be an abuse of that discretion to use a bail schedule,[8] and a trial court is required to consider the relevant criteria specified in the governing statute or rules, rather than simply set the amount of bail in accordance with a bond schedule for each count.[9] Furthermore, while an arresting officer generally does not have the inherent authority to fix the amount of bail,[10] statutes in some states provide that the amount of bail rests in the discretion of the justice or judge or other specified law enforcement officers.[11]

A court does not have the discretion to set a different bail bond amount depending on whether a cash bond or a surety bond is used.[12]

Footnotes

1 §§ 42 to 45.

2 Miller v. Eleventh Judicial Dist. Court, 2007 MT 58, 336 Mont. 207, 154 P.3d 1186 (2007).

3 Green v. Petit, 222 Ind. 467, 54 N.E.2d 281 (1944); Braden v. Lady, 276 S.W.2d 664 (Ky. 1955); Lazzerini v. Maier, 2018-Ohio-1788, 111 N.E.3d 727 (Ohio Ct. App. 5th Dist. Stark County 2018).
Where there is more than one defendant, the standards for fixing bail are to be applied to each defendant individually. Stack v. Boyle, 342 U.S. 1, 72 S. Ct. 1, 96 L. Ed. 3 (1951).

4 State v. Parker, 220 N.C. 416, 17 S.E.2d 475 (1941).

5 U.S. v. James, 674 F.2d 886 (11th Cir. 1982); A.Z. v. State, 248 So. 3d 27 (Ala. Crim. App. 2017); Drexler v. State, 2018 Ark. App. 95, 538 S.W.3d 888 (2018); State v. Williams, 106 Conn. App. 323, 941 A.2d 985 (2008); State v. Henley, 136 Haw. 471, 363 P.3d 319 (2015); Phillips v. State, 550 N.E.2d 1290 (Ind. 1990) (abrogated on other grounds by, Fry v. State, 990 N.E.2d 429 (Ind. 2013)); Barbosa v. Com., 475 Mass. 1009, 56 N.E.3d 813 (2016); State v. Martin, 743 N.W.2d 261 (Minn. 2008); Dendy v. State, 931 So. 2d 608 (Miss. Ct. App. 2005); State v. Woodward, 210 Neb. 740, 316 N.W.2d 759 (1982); State v. Hocutt, 177 N.C. App. 341, 628 S.E.2d 832 (2006); Lazzerini v. Maier, 2018-Ohio-1788, 111 N.E.3d 727 (Ohio Ct. App. 5th Dist. Stark County 2018); Ex parte Durst, 148 S.W.3d 496 (Tex. App. Houston 14th Dist. 2004); State v. Bailey, 204 Vt. 294, 2017 VT 18, 166 A.3d 608 (2017); State v. Huckins, 5 Wash. App. 2d 457, 426 P.3d 797 (Div. 2 2018).

6 Querubin v. Com., 440 Mass. 108, 795 N.E.2d 534 (2003).
That prohibition is discussed in § 87.

7 Ex parte Durst, 148 S.W.3d 496 (Tex. App. Houston 14th Dist. 2004).
A trial court acted within its discretion in setting bond after convictions were reversed for retrial, where, among other things, the bond was within the suggested range of bail guidelines. Hardy v. McFaul, 103 Ohio St. 3d 408, 2004-Ohio-5467, 816 N.E.2d 248 (2004).

8 Pelekai v. White, 75 Haw. 357, 861 P.2d 1205 (1993).

9 Riverocruz v. Bradshaw, 964 So. 2d 245 (Fla. 4th DCA 2007).

10 Trevathan v. Mutual Life Ins. Co. of New York, 166 Or. 515, 113 P.2d 621 (1941).

11 Pelekai v. White, 75 Haw. 357, 861 P.2d 1205 (1993).

12 Professional Bondsmen of Texas v. Carey, 762 S.W.2d 691 (Tex. App. Amarillo 1988).
As to deposits of cash in lieu of bail, generally, see §§ 81 to 85.

End of Document

8A Am. Jur. 2d Bail and Recognizance § 87

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VII. Amount of Bail or Obligation in Lieu of Bail

A. In General

§ 87. Prohibition of excessive bail

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 52

A.L.R. Library

Excessiveness of Bail in State Criminal Cases—Amounts Over $500,000, 7 A.L.R.6th 487

Trial Strategy

Excessive Bail, 18 Am. Jur. Proof of Facts 2d 149

The Eighth Amendment to the U.S. Constitution provides that excessive bail shall not be required.[1] The Eighth Amendment's Excessive Bail Clause prevents the imposition of bail conditions that are excessive in light of the valid interests the state seeks to protect by offering bail.[2] The clause says nothing, however, about whether bail shall be available at all, and is meant merely to provide that bail must not be excessive in those cases where it is proper to grant bail.[3] The prohibition against excessive bail means that when the government's aim is the prevention of the defendant's flight, bail must be set by a court at a sum designed to ensure that goal, and no more;[4] however, when pretrial detention is based on an interest other than ensuring the defendant's appearance at trial—such as when the defendant poses a threat to the community—even the Eighth Amendment does not require

the grant of bail.[5] The right not to be subjected to excessive bail conferred by the Eighth Amendment is implemented, so far as federal criminal defendants are concerned, in the Bail Reform Act.[6]

The supreme court has held that, at least in the context of punishment, the Eighth Amendment is applicable to the states, through the 14th Amendment,[7] and a court of appeals has also held that the excessive bail provision of the Eighth Amendment is integral to the concept of ordered liberty and therefore binding on the states under the 14th Amendment.[8] Various states' constitutions also contain their own provisions against excessive bail,[9] such as a provision providing that excessive bail shall not be exacted for bailable offenses,[10] and the rule in some jurisdictions is that bail may not be set in an unreasonably high amount, nor may it be set as a punitive measure.[11] The amount of bail should be set sufficiently high to give reasonable assurance that the accused will comply with the undertaking, but should not be set so high as to be an instrument of oppression.[12] Bail set in a particular amount becomes oppressive when it is based on the assumption that the accused cannot afford bail in that amount and for the express purpose of forcing the defendant to remain incarcerated pending trial,[13] and the setting of an excessive bond is the functional equivalent of setting no bond at all.[14]

It has been said that there is not any hard-and-fast rule for determining what is reasonable or excessive bail,[15] but it has also been stated that the touchstone for identifying excessive bail under the Eighth Amendment is not what a defendant can pay but, rather, whether bail is set at a figure higher than an amount reasonably calculated to fulfill the purpose of giving adequate assurance that the defendant will stand trial and submit to sentence if found guilty.[16] The amount of bail is not itself finally determinative of its excessiveness.[17] What would be a reasonable bail in the case of one defendant may be excessive in the case of another.[18]

The burden of proof is on the defendant to show that bail is excessive.[19]

Where two or more cases are pending against a defendant, the fact that bail in one case, considered by itself, is reasonable, does not prevent the collective amount required in the several cases from being excessive.[20] However, the aggregate amount of bail on multiple charges may be within the court's discretion, considering the required factors.[21]

Several states' statutes imposing a fee to cover the costs of the bail bond system did not violate the Eighth Amendment's prohibition on excessive bail.[22]

Footnotes

1 U.S. Const. Amend. VIII.

2 Mendia v. Garcia, 165 F. Supp. 3d 861 (N.D. Cal. 2016).

3 Walker v. City of Calhoun, GA, 901 F.3d 1245 (11th Cir. 2018), petition for certiorari filed (U.S. Dec. 20, 2018).
As to the extent of the right to bail, see §§ 11 to 25.

4 Amount of bail sufficient to ensure appearance, generally, see § 88.

5 Fry v. State, 990 N.E.2d 429 (Ind. 2013).

6 Bolante v. Keisler, 506 F.3d 618 (7th Cir. 2007).

7 Am. Jur. 2d, Constitutional Law § 422.

8 Meechaicum v. Fountain, 696 F.2d 790 (10th Cir. 1983).

9 People v. Hoover, 119 P.3d 564 (Colo. App. 2005) (applies only to pretrial bail); Lopez v. State, 985 N.E.2d 358 (Ind. Ct. App. 2013); Commonwealth v. Tsouprakakis, 267 Mass. 496, 166 N.E. 855 (1929); State v. Seaton, 170 Neb. 687, 103 N.W.2d 833 (1960); State ex rel. Sylvester v. Neal, 140 Ohio St. 3d 47, 2014-

Ohio-2926, 14 N.E.3d 1024 (2014); Ex parte Gonzalez, 383 S.W.3d 160 (Tex. App. San Antonio 2012), petition for discretionary review refused, (June 13, 2012); State v. Sauve, 159 Vt. 566, 621 A.2d 1296 (1993); State v. Gregory, 192 Wash. 2d 1, 427 P.3d 621 (2018).

10 State v. Sauve, 159 Vt. 566, 621 A.2d 1296 (1993).

11 People v. Mohammed, 171 Misc. 2d 130, 653 N.Y.S.2d 492 (Sup 1996).

Pursuant to a statute, the amount of bail should be fixed in a reasonable amount. Pelekai v. White, 75 Haw. 357, 861 P.2d 1205 (1993).

12 Cooley v. State, 232 S.W.3d 228 (Tex. App. Houston 1st Dist. 2007).

13 Richardson v. State, 181 S.W.3d 756 (Tex. App. Waco 2005).

14 Narducci v. State, 952 So. 2d 622 (Fla. 4th DCA 2007).

15 Braden v. Lady, 276 S.W.2d 664 (Ky. 1955).

Excessiveness of bail is not determined by a general mathematical formula, but turns on the correlation between the state interests a judicial officer seeks to protect and the nature and magnitude of the bail conditions imposed in a particular case. Galen v. County of Los Angeles, 477 F.3d 652 (9th Cir. 2007).

16 § 88.

17 Application of Kennedy, 169 Neb. 586, 100 N.W.2d 550 (1960).

18 Stack v. Boyle, 342 U.S. 1, 72 S. Ct. 1, 96 L. Ed. 3 (1951); Bennett v. U.S., 36 F.2d 475 (C.C.A. 5th Cir. 1929).

As to particular factors affecting bail and the determination of reasonableness or excessiveness, see §§ 88 to 94.

19 Ex parte Jackson, 257 S.W.3d 520 (Tex. App. Texarkana 2008).

20 Green v. Petit, 222 Ind. 467, 54 N.E.2d 281 (1944).

21 Cooley v. State, 232 S.W.3d 228 (Tex. App. Houston 1st Dist. 2007).

22 Broussard v. Parish of Orleans, 318 F.3d 644 (5th Cir. 2003) (Louisiana statute); Payton v. County of Carroll, 473 F.3d 845 (7th Cir. 2007) (Illinois statute; since there was no indication that judges set bail at the maximum point that would not be excessive so that imposition of the fee would make bail excessive, and persons who were arrested could file a motion for reduction of bail).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 88

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VII. Amount of Bail or Obligation in Lieu of Bail

B. Factors Considered in Determining Amount

§ 88. Amount of bail sufficient to ensure appearance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 51, 52

A.L.R. Library

Excessiveness of Bail in State Criminal Cases—Amounts Over $500,000, 7 A.L.R.6th 487

Trial Strategy

Excessive Bail, 18 Am. Jur. Proof of Facts 2d 149

Since the purpose of bail is to ensure the presence of the accused at trial,[1] one of the factors considered in setting bail is the probability of the accused appearing at trial.[2] The amount of a bond should be sufficient to give reasonable assurance that the defendant will appear.[3] The issue is whether the amount is high enough to reasonably assure the defendant's presence when required, but not higher than that reasonably calculated to fulfill that purpose.[4] As sometimes stated, bail should not be more than will be reasonably sufficient to prevent evasion of the law by flight or concealment, but should be reasonably sufficient to secure the accused's presence at trial.[5] Thus, the Eighth Amendment requires that when the government has admitted that its only interest is in preventing flight, bail must be set by a court at the amount designed to ensure that goal, and no more.[6] It

has also been said that the test for the excessiveness is not whether the defendant is financially capable of posting bond,[7] but whether the amount of bail is reasonably calculated to assure the defendant's appearance at trial.[8] The touchstone for identifying excessive bail under the Eighth Amendment is not what a defendant can pay but, rather, whether bail is set at a figure higher than an amount reasonably calculated to fulfill the purpose of giving adequate assurance that the defendant will stand trial and submit to sentence if found guilty.[9] Bail set at an amount higher than reasonably calculated to ensure that the accused will appear to stand trial and submit to sentence if convicted is excessive, and falls within the proscription of the Eighth Amendment.[10]

When setting bond after convictions were reversed for retrial, a court may take into account that the likelihood of flight increased, given the defendant's knowledge that the evidence was strong enough for convictions and that a prison sentence was certain, if again convicted.[11]

Footnotes

1 Weisheit v. State, 969 N.E.2d 1082 (Ind. Ct. App. 2012).

2 Palmer v. District Court of City and County of Denver, Second Judicial Dist., 156 Colo. 284, 398 P.2d 435, 11 A.L.R.3d 1380 (1965); Jones v. Grimes, 219 Ga. 585, 134 S.E.2d 790 (1964); Phillips v. State, 550 N.E.2d 1290 (Ind. 1990) (abrogated on other grounds by, Fry v. State, 990 N.E.2d 429 (Ind. 2013)); State v. Mastrian, 266 Minn. 58, 122 N.W.2d 621 (1963); People ex rel. Lobell v. McDonnell, 296 N.Y. 109, 71 N.E.2d 423 (1947); Delaney v. Shobe, 218 Or. 626, 346 P.2d 126 (1959).

3 Ray v. State, 679 N.E.2d 1364 (Ind. Ct. App. 1997); Richardson v. State, 181 S.W.3d 756 (Tex. App. Waco 2005).

The bond should be fixed in such amount as will exact vigilance on the part of the sureties to see that the defendant appears in court when called. State v. Chivers, 198 La. 1098, 5 So. 2d 363 (1941).

4 Stack v. Boyle, 342 U.S. 1, 72 S. Ct. 1, 96 L. Ed. 3 (1951); Gusick v. Boies, 72 Ariz. 309, 234 P.2d 430 (1951); Jones v. Grimes, 219 Ga. 585, 134 S.E.2d 790 (1964).

5 Palmer v. District Court of City and County of Denver, Second Judicial Dist., 156 Colo. 284, 398 P.2d 435, 11 A.L.R.3d 1380 (1965).

6 U.S. v. Salerno, 481 U.S. 739, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987).

7 § 93.

8 U.S. v. Beaman, 631 F.2d 85 (6th Cir. 1980).

Bail that is beyond a defendant's reach is not automatically prohibited; where, based on the judge's consideration of all the relevant circumstances, neither alternative nonfinancial conditions nor an amount the defendant can afford will adequately assure his or her appearance for trial, it is permissible to set bail at a higher amount, but no higher than necessary to ensure the defendant's appearance. Brangan v. Commonwealth, 477 Mass. 691, 80 N.E.3d 949 (2017).

Neither the New Mexico Constitution nor the Rules of Criminal Procedure permit a judge to set high bail for the purpose of preventing a defendant's pretrial release. State v. Brown, 2014-NMSC-038, 338 P.3d 1276 (N.M. 2014).

The basic test for excessive bail is whether the amount is higher than reasonably necessary to assure the accused's presence at trial. U.S. v. James, 674 F.2d 886 (11th Cir. 1982).

9 State v. Pratt, 204 Vt. 282, 2017 VT 9, 166 A.3d 600 (2017).

10 Heikkinen v. U.S., 208 F.2d 738 (7th Cir. 1953).

The Eighth Amendment's prohibition against excessive bail is the foundation of a bail system, which, by conditioning release on the offer of financial security, seeks to reconcile the defendant's presence at trial. Bail is excessive when set at an amount higher than necessary to ensure the appearance of the accused at trial. Because the practical effect of excessive bail is the denial of bail, logic compels the conclusion that the harm the Eighth Amendment aims to prevent is the unnecessary deprivation of pretrial liberty. Meechaicum v. Fountain, 696 F.2d 790 (10th Cir. 1983).

Where a court sets bail at 2½ times the amount requested by the district attorney, with nothing before it to justify that increase, considering evidence concerning the risk that the defendant would flee, there has been an invasion of the defendant's constitutional rights, and not a mere difference of opinion. People ex rel. Lobell v. McDonnell, 296 N.Y. 109, 71 N.E.2d 423 (1947).

11 Hardy v. McFaul, 103 Ohio St. 3d 408, 2004-Ohio-5467, 816 N.E.2d 248 (2004).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 89

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VII. Amount of Bail or Obligation in Lieu of Bail

B. Factors Considered in Determining Amount

§ 89. Amount of bail sufficient to ensure appearance—Effect of prior failure to appear

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 51, 52

A.L.R. Library

Excessiveness of Bail in State Criminal Cases—Amounts Over $500,000, 7 A.L.R.6th 487

Trial Strategy

Excessive Bail, 18 Am. Jur. Proof of Facts 2d 149

Among the factors considered on the question of the amount of bail required to secure the accused's attendance is the defendant's compliance with the conditions of previous bonds,[1] including whether the accused has previously skipped bail[2] and forfeited other bonds.[3] Courts also consider the defendant's history of not appearing in court,[4] or whether the defendant was a fugitive from justice when arrested.[5] In other words, courts weigh the defendant's history of flight or failure to appear at court proceedings.[6]

Where a constitution guarantees the right to bail except in capital cases, although one accused of a noncapital offense may not be denied bail because of his or her failure to appear as required by the bail bond,[7] the court may set bail at a higher figure because of the accused's prior default.[8]

Footnotes

1 Henderson v. State, 236 S.W.3d 814 (Tex. App. Waco 2007).

2 Ex parte Poindexter, 511 S.W.2d 529 (Tex. Crim. App. 1974).
The court may consider the fact that the accused has jumped bail in determining whether bond was larger than necessary to reasonably assure his appearance. U.S. v. Skipper, 633 F.2d 1177 (5th Cir. 1981).
It is within the discretion of the trial court to increase the amount of the bond after the accused has absconded and been returned to the presence of the court by law enforcement officers. Wallace v. State, 193 Tenn. 182, 245 S.W.2d 192, 29 A.L.R.2d 941 (1952).

3 Jones v. Grimes, 219 Ga. 585, 134 S.E.2d 790 (1964); State v. Mastrian, 266 Minn. 58, 122 N.W.2d 621 (1963); Delaney v. Shobe, 218 Or. 626, 346 P.2d 126 (1959).
Where a forfeiture is taken and an application is again made for bail in the same case, the trial judge has full authority to increase the amount of the bond. Wallace v. State, 193 Tenn. 182, 245 S.W.2d 192, 29 A.L.R.2d 941 (1952).

4 Boo'ze v. State, 846 A.2d 237 (Del. 2004).

5 Ex parte Singleton, 902 So. 2d 132 (Ala. Crim. App. 2004) (the state had searched for the defendant for five years, and the defendant was captured in another state); Jones v. Grimes, 219 Ga. 585, 134 S.E.2d 790 (1964); State v. Mastrian, 266 Minn. 58, 122 N.W.2d 621 (1963); Delaney v. Shobe, 218 Or. 626, 346 P.2d 126 (1959).

6 Lazzerini v. Maier, 2018-Ohio-1788, 111 N.E.3d 727 (Ohio Ct. App. 5th Dist. Stark County 2018).

7 § 12.

8 Palmer v. District Court of City and County of Denver, Second Judicial Dist., 156 Colo. 284, 398 P.2d 435, 11 A.L.R.3d 1380 (1965); Wallace v. State, 193 Tenn. 182, 245 S.W.2d 192, 29 A.L.R.2d 941 (1952); Taylor v. State, 2018 WL 6070307 (Tex. App. Houston 14th Dist. 2018).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 90

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VII. Amount of Bail or Obligation in Lieu of Bail

B. Factors Considered in Determining Amount

§ 90. Nature and seriousness of offense as factor considered in determination of bail amount; potential penalty

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 51, 52

A.L.R. Library

Excessiveness of Bail in State Criminal Cases—Amounts Over $500,000, 7 A.L.R.6th 487

Trial Strategy

Excessive Bail, 18 Am. Jur. Proof of Facts 2d 149

Among the factors sometimes considered by the courts in determining the amount of bail are the nature[1] and seriousness[2] of the offenses charged, aggravating factors associated with the particular crime,[3] and the penalty that may be imposed.[4]

Since crimes of the same class often differ greatly in their character, different bail provisions may be made in different cases, even though the offenses are of the same class.[5]

Footnotes

1 U.S. v. Kostadinov, 721 F.2d 411 (2d Cir. 1983); Jones v. Grimes, 219 Ga. 585, 134 S.E.2d 790 (1964); Weisheit v. State, 969 N.E.2d 1082 (Ind. Ct. App. 2012); State v. Mastrian, 266 Minn. 58, 122 N.W.2d 621 (1963); Strickland v. Darby, 135 So. 3d 234 (Miss. Ct. App. 2014); People ex rel. Lobell v. McDonnell, 296 N.Y. 109, 71 N.E.2d 423 (1947); Lazzerini v. Maier, 2018-Ohio-1788, 111 N.E.3d 727 (Ohio Ct. App. 5th Dist. Stark County 2018); Delaney v. Shobe, 218 Or. 626, 346 P.2d 126 (1959); Ex parte Cardenas, 557 S.W.3d 722 (Tex. App. Corpus Christi 2018).

2 Miller v. Eleventh Judicial Dist. Court, 2007 MT 58, 336 Mont. 207, 154 P.3d 1186 (2007); People ex rel. Rubenstein v. Warden of City Prison, New York, 279 A.D. 47, 107 N.Y.S.2d 948 (1st Dep't 1951); Hardy v. McFaul, 103 Ohio St. 3d 408, 2004-Ohio-5467, 816 N.E.2d 248 (2004); Ex Parte Castellanos, 420 S.W.3d 878 (Tex. App. Houston 14th Dist. 2014).

3 Ex Parte Allen-Pieroni, 524 S.W.3d 252 (Tex. App. Waco 2016).

4 Ex parte Singleton, 902 So. 2d 132 (Ala. Crim. App. 2004) (possible life sentence as a habitual offender); Jones v. Grimes, 219 Ga. 585, 134 S.E.2d 790 (1964); Pelekai v. White, 75 Haw. 357, 861 P.2d 1205 (1993); Weisheit v. State, 969 N.E.2d 1082 (Ind. Ct. App. 2012); State v. Mastrian, 266 Minn. 58, 122 N.W.2d 621 (1963); Strickland v. Darby, 135 So. 3d 234 (Miss. Ct. App. 2014); Application of Kennedy, 169 Neb. 586, 100 N.W.2d 550 (1960); People v. Doe, 59 Misc. 3d 866, 73 N.Y.S.3d 871 (Sup 2018); Delaney v. Shobe, 218 Or. 626, 346 P.2d 126 (1959); Ex parte Cardenas, 557 S.W.3d 722 (Tex. App. Corpus Christi 2018).

Where a defendant was convicted of a Class III felony, which carried a penalty of up to 20 years imprisonment, a $25,000 fine, or both, and, in addition, the record showed that in two prior cases, the defendant had failed to appear after being released on bail in each case, it was not an abuse of discretion for the court to set an appeal bond at $50,000 cash. State v. Dawn, 246 Neb. 384, 519 N.W.2d 249 (1994).

The trial court abused its discretion in setting the appeal bond in a heroin possession case at $50,000, where the crime was a nonviolent one, the sentence was assessed at five years' probation, and the defendant was gainfully employed and had no previous criminal record. Swinnea v. State, 614 S.W.2d 453 (Tex. Crim. App. 1981).

5 Green v. Petit, 222 Ind. 467, 54 N.E.2d 281 (1944).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 91

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VII. Amount of Bail or Obligation in Lieu of Bail

B. Factors Considered in Determining Amount

§ 91. Defendant's character, reputation, prior behavior, and criminal record as factors considered in determination of bail amount

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 51, 52

A.L.R. Library

Excessiveness of Bail in State Criminal Cases—Amounts Over $500,000, 7 A.L.R.6th 487

Trial Strategy

Excessive Bail, 18 Am. Jur. Proof of Facts 2d 149

Among the factors which are considered by the courts in determining the amount of bail are the accused's character,[1] and reputation,[2] as well as his or her criminal record[3] and work history.[4] The court may also consider the defendant's behavior during parole from prison on a previous criminal conviction,[5] or whether the defendant continued to commit crimes during incarceration and probation.[6] Courts have also considered whether the defendant apparently committed another crime after the one at issue,[7] and whether a high bond was necessary to deter the defendant from further attempts at the same crime.[8]

Footnotes

1 Jones v. Grimes, 219 Ga. 585, 134 S.E.2d 790 (1964); People v. Officer, 10 Ill. 2d 203, 139 N.E.2d 773 (1957); Sykes v. Warden, Md. Penitentiary, 201 Md. 662, 93 A.2d 549 (1953); Brangan v. Commonwealth, 477 Mass. 691, 80 N.E.3d 949 (2017); State v. Mastrian, 266 Minn. 58, 122 N.W.2d 621 (1963); Strickland v. Darby, 135 So. 3d 234 (Miss. Ct. App. 2014); State v. Bentley, 46 N.J. Super. 193, 134 A.2d 445 (App. Div. 1957); People v. Doe, 59 Misc. 3d 866, 73 N.Y.S.3d 871 (Sup 2018); Lazzerini v. Maier, 2018-Ohio-1788, 111 N.E.3d 727 (Ohio Ct. App. 5th Dist. Stark County 2018); Delaney v. Shobe, 218 Or. 626, 346 P.2d 126 (1959); State v. James, 70 Wash. 2d 624, 424 P.2d 1005 (1967).

2 Jones v. Grimes, 219 Ga. 585, 134 S.E.2d 790 (1964); State v. Mastrian, 266 Minn. 58, 122 N.W.2d 621 (1963); Strickland v. Darby, 135 So. 3d 234 (Miss. Ct. App. 2014); People ex rel. Lobell v. McDonnell, 296 N.Y. 109, 71 N.E.2d 423 (1947) (general reputation and character); Delaney v. Shobe, 218 Or. 626, 346 P.2d 126 (1959).

3 Ex parte Singleton, 902 So. 2d 132 (Ala. Crim. App. 2004) (previous murder conviction); Boo'ze v. State, 846 A.2d 237 (Del. 2004); Jones v. Grimes, 219 Ga. 585, 134 S.E.2d 790 (1964); People v. Officer, 10 Ill. 2d 203, 139 N.E.2d 773 (1957); Sykes v. Warden, Md. Penitentiary, 201 Md. 662, 93 A.2d 549 (1953); Strickland v. Darby, 135 So. 3d 234 (Miss. Ct. App. 2014); Miller v. Eleventh Judicial Dist. Court, 2007 MT 58, 336 Mont. 207, 154 P.3d 1186 (2007) (defendant's proven unwillingness to follow the law); State v. Bentley, 46 N.J. Super. 193, 134 A.2d 445 (App. Div. 1957); People v. Doe, 59 Misc. 3d 866, 73 N.Y.S.3d 871 (Sup 2018); Ex parte Cardenas, 557 S.W.3d 722 (Tex. App. Corpus Christi 2018); State v. James, 70 Wash. 2d 624, 424 P.2d 1005 (1967).

4 People v. Doe, 59 Misc. 3d 866, 73 N.Y.S.3d 871 (Sup 2018); Ex parte Cardenas, 557 S.W.3d 722 (Tex. App. Corpus Christi 2018).

5 State v. Petrucelli, 37 N.J. Super. 1, 116 A.2d 721 (App. Div. 1955).

6 Boo'ze v. State, 846 A.2d 237 (Del. 2004).

7 Ex parte Jackson, 257 S.W.3d 520 (Tex. App. Texarkana 2008).

8 Cooley v. State, 232 S.W.3d 228 (Tex. App. Houston 1st Dist. 2007) (further attempts on business partner's life, after the defendant was charged with three counts of soliciting the partner's murder on three different dates).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 92

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VII. Amount of Bail or Obligation in Lieu of Bail

B. Factors Considered in Determining Amount

§ 92. Character and strength of evidence as factors considered in determination of bail amount; probability of guilt

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 51, 52

A.L.R. Library

Excessiveness of Bail in State Criminal Cases—Amounts Over $500,000, 7 A.L.R.6th 487

Trial Strategy

Excessive Bail, 18 Am. Jur. Proof of Facts 2d 149

The character and strength, or weight, of the evidence against the accused is a factor that may be considered in determining the amount of bail.[1] In this regard, the probability of establishing guilt at trial has sometimes been deemed a proper consideration in determining the amount of bail.[2] However, there is also authority for the view that it is improper for a court to determine the amount of bail based exclusively on the court's conviction that the defendant will be found guilty of serious crimes entailing a lengthy prison term.[3]

Footnotes

1 Jones v. Grimes, 219 Ga. 585, 134 S.E.2d 790 (1964); State v. Mastrian, 266 Minn. 58, 122 N.W.2d 621 (1963); People v. Doe, 59 Misc. 3d 866, 73 N.Y.S.3d 871 (Sup 2018); Lazzerini v. Maier, 2018-Ohio-1788, 111 N.E.3d 727 (Ohio Ct. App. 5th Dist. Stark County 2018); Delaney v. Shobe, 218 Or. 626, 346 P.2d 126 (1959); Ex parte Davis, 147 S.W.3d 546, 7 A.L.R.6th 829 (Tex. App. Waco 2004) (defendant presented evidence that he did not directly participate in the charged murder).
Bond of $910,000 with respect to a defendant charged with multiple counts of sexual battery on children was unreasonable and excessive, where the state's evidence of the defendant's guilt was both arguably impeached and rendered doubtful by substantial contradictions in the evidence, among other factors. Stallings v. Ryan, 979 So. 2d 1167 (Fla. 3d DCA 2008).

2 Green v. Petit, 222 Ind. 467, 54 N.E.2d 281 (1944).

3 People ex rel. Benton by Weintraub v. Warden: New York City House of Detention for Men, East Elmhurst, New York 11370, 118 A.D.2d 443, 499 N.Y.S.2d 738 (1st Dep't 1986).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 93

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VII. Amount of Bail or Obligation in Lieu of Bail

B. Factors Considered in Determining Amount

§ 93. Defendant's financial position or ability to post bail as factor considered in determination of bail amount

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 51, 52

A.L.R. Library

Excessiveness of Bail in State Criminal Cases—Amounts Over $500,000, 7 A.L.R.6th 487

Trial Strategy

Excessive Bail, 18 Am. Jur. Proof of Facts 2d 149

It has been said that, in fixing the amount of bail, consideration should be given to the defendant's station in life,[1] and that it is appropriate for the courts to vary the amount of bail in the case of indigent defendants.[2] Thus, courts may consider the accused's financial position[3] or ability[4] to post bail in determining the amount of bail,[5] and bail must be fixed in a reasonable amount, considering, inter alia, the accused's financial status.[6] Under federal law, a judicial officer may not impose a financial condition that results in the pretrial detention of the person.[7] However, it has also been said that the test for the excessiveness of bail is not whether the defendant is financially capable of posting bond[8] but whether the amount of bail is reasonably calculated to

assure the defendant's appearance at trial,[9] and that bail is not rendered excessive by mere inability to procure bail in the amount required.[10] Thus, in addition to a defendant's financial resources, a trial court must consider a host of other factors in determining whether to release the defendant on bail or other conditions, and if so, what bail or other conditions are appropriate.[11]

Observation:

It is the incarceration of those individuals who cannot meet established money bail requirements, without meaningful consideration of other possible alternatives, which infringes on both due process and equal protection requirements.[12]

Since excessive bond, depending on the defendant's financial resources, is tantamount to no bond at all, evidence of the defendant's financial resources must be heard before bond is set.[13] A court will not imply the existence of financial resources available to make bail, absent evidence of their existence.[14]

CUMULATIVE SUPPLEMENT

Cases:

Bail in the amount of $75,000 cash and $150,000 bond, with option of $500,000 partially secured bond at 10%, was least restrictive condition that would reasonably assure defendant charged with making a terroristic threat would return to court, where defendant posed significant risk of flight, had retained private counsel, and had not presented himself as being indigent. N.Y. CPL §§ 510.10(1), 510.30; N.Y. Penal Law § 490.20(1). People v. Allen, 66 Misc. 3d 792, 119 N.Y.S.3d 26 (County Ct. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Beddow v. State, 259 Ala. 651, 68 So. 2d 503 (1953).

2 McCoy v. U.S., 357 F.2d 272 (D.C. Cir. 1966).
As to the effect of indigence on the right to bail, see § 30.

3 Williams v. State, 855 So. 2d 1206 (Fla. 5th DCA 2003); Phillips v. State, 550 N.E.2d 1290 (Ind. 1990) (abrogated on other grounds by, Fry v. State, 990 N.E.2d 429 (Ind. 2013)); People v. Doe, 59 Misc. 3d 866, 73 N.Y.S.3d 871 (Sup 2018).

4 Royalty v. State, 235 So. 2d 718 (Miss. 1970).

5 Caliste v. Cantrell, 329 F. Supp. 3d 296 (E.D. La. 2018); Jones v. Grimes, 219 Ga. 585, 134 S.E.2d 790 (1964); Lazzerini v. Maier, 2018-Ohio-1788, 111 N.E.3d 727 (Ohio Ct. App. 5th Dist. Stark County 2018); Delaney v. Shobe, 218 Or. 626, 346 P.2d 126 (1959); Henderson v. State, 236 S.W.3d 814 (Tex. App. Waco 2007).

Among the factors to consider in fixing bail is the defendant's ability to provide bail in an amount less than that initially fixed but adequate to meet the minimal requirements of the situation. State v. Mastrian, 266 Minn. 58, 122 N.W.2d 621 (1963).

6 Pelekai v. White, 75 Haw. 357, 861 P.2d 1205 (1993) (so construing a state statute).

When a judge fails to consider ability to pay and alternative conditions of release and sets a bond amount plainly outside the reach of an individual's financial resources, such a decision amounts, for all practical purposes, to a denial of bond. Lett v. Decker, 2018 WL 4931544 (S.D. N.Y. 2018).

Bail in the amount of $1 million was excessive for a murder defendant and was reduced to $750,000, even though the defendant lived in another county, had disregarded conditions of community supervision, was engaged in narcotics trafficking, knowingly participated in a murder, posed a danger to the community, and had a prior criminal history, where the defendant had inadequate financial resources to make bail of $1 million. Ex parte Davis, 147 S.W.3d 546, 7 A.L.R.6th 829 (Tex. App. Waco 2004).

An excessive bond was reduced, where the defendant demonstrated ownership of residential property capable of being used as collateral for a reasonable bond. Stallings v. Ryan, 979 So. 2d 1167 (Fla. 3d DCA 2008).

7 § 45.

8 U.S. v. Beaman, 631 F.2d 85 (6th Cir. 1980).

9 § 88.

10 Braden v. Lady, 276 S.W.2d 664 (Ky. 1955); Leo v. Com., 442 Mass. 1025, 814 N.E.2d 1077 (2004); Ex parte Hunt, 138 S.W.3d 503 (Tex. App. Fort Worth 2004), petition for discretionary review refused, (5 pets.) (Nov. 10, 2004) (further noting that if the ability to make bond in a specified amount controlled, then the trial court's role in setting bond would be completely eliminated, and the accused could determine what the bond should be).

The trial court was not required to find that a defendant had the ability to pay the bail amount set by the court in order for the amount to be supported by the record; the amount of bail was valid as long as the record showed that defendant posed a risk of nonappearance and that the conditions were the least restrictive means of securing defendant's appearance, and although that bail statute listed "financial resources" as one factor a court may consider when imposing conditions of release, nothing suggested financial resources and the ability to pay bail were intended to be the controlling factor when a court set bail. State v. Pratt, 204 Vt. 282, 2017 VT 9, 166 A.3d 600 (2017).

11 Dyson v. Campbell, 921 So. 2d 692 (Fla. 1st DCA 2006) (further holding that a defendant's claim that he lacked the financial resources to satisfy a bail bond of $25,000 with respect to a burglary charge and $10,000 with respect to a robbery charge did not render those amounts excessive or unreasonable, where the trial judge made a conscientious and reasoned decision concerning the appropriate conditions of pretrial release, and few, if any, of the factors weighed in the defendant's favor).

An order granting pretrial release on posting a $300,000 bond secured by real property did not violate 18 U.S.C.A. § 3142(c)(2), which provides that bail may not be used to deny release, even though the defendant was unable to comply with the financial condition, resulting in his detention, since that detention was not based solely on the defendant's inability to meet the financial condition, but on a determination that the amount of the bond was necessary to assure the defendant's attendance at trial based on the defendant's alleged appropriation of frozen assets in violation of a court order, the size and scope of the defendant's alleged scheme, and the risk that the defendant may intimidate or threaten prospective witnesses or jurors. U.S. v. Fidler, 419 F.3d 1026 (9th Cir. 2005).

Bail in the amount of $200,000, rather than $50,000, was warranted for a defendant charged with the murder of her husband, where, although she had significant ties to the community and did not have the financial ability to make $200,000 bail, her family and friends testified that she would be a flight risk and at risk to harm herself or others if released on bond, there was no indication that bail was set with the purpose of forcing her to remain incarcerated pending trial, a potential life sentence and evidence of premeditation warranted a high bail amount, and there was a concern that the defendant would pressure her children to testify untruthfully on her behalf. Richardson v. State, 181 S.W.3d 756 (Tex. App. Waco 2005).

Bail set in amounts totaling $400,000 with respect to charges of aggravated sexual assault of a child and indecency with a child was not unconstitutionally excessive, where, even though the defendant presented evidence that he could not afford to post bond, he made no effort to find out if friends or family members

were willing or able to help, the crimes charged were serious, and the defendant had expressed a desire to flee to Mexico with his family and had thoughts of suicide. Clemons v. State, 220 S.W.3d 176 (Tex. App. Eastland 2007).

12 Pugh v. Rainwater, 572 F.2d 1053 (5th Cir. 1978).

13 Camara v. State, 916 So. 2d 946 (Fla. 3d DCA 2005).

14 Ex parte Davis, 147 S.W.3d 546, 7 A.L.R.6th 829 (Tex. App. Waco 2004).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 94

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VII. Amount of Bail or Obligation in Lieu of Bail

B. Factors Considered in Determining Amount

§ 94. Miscellaneous factors considered in determination of bail amount

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 51, 52

A.L.R. Library

Excessiveness of Bail in State Criminal Cases—Amounts Over $500,000, 7 A.L.R.6th 487

Trial Strategy

Excessive Bail, 18 Am. Jur. Proof of Facts 2d 149

A court may consider the accused's health[1] and social condition[2] in setting bail. The defendant's family and community ties[3] and length of residence[4] may also be considered, and lack of information about the defendant's history and ties to the community may be taken into account in determining the amount of bail necessary to secure the defendant's appearance.[5]

The fact that the accused is under bond for appearances at trials in other cases should also be considered.[6] Furthermore, it has been said that in determining the amount of bail, public good as well as the accused's rights should be kept in mind,[7] and community safety is a proper consideration in setting the amount of bail.[8]

The absence of a codefendant is not a factor in setting bail, unless the defendant assisted in procuring that absence.[9]

Footnotes

1 Jones v. Grimes, 219 Ga. 585, 134 S.E.2d 790 (1964); State v. Mastrian, 266 Minn. 58, 122 N.W.2d 621 (1963); Delaney v. Shobe, 218 Or. 626, 346 P.2d 126 (1959).

2 People ex rel. Lobell v. McDonnell, 296 N.Y. 109, 71 N.E.2d 423 (1947).

3 Robinson v. State, 95 So. 3d 437 (Fla. 5th DCA 2012); Strickland v. Darby, 135 So. 3d 234 (Miss. Ct. App. 2014); Lazzerini v. Maier, 2018-Ohio-1788, 111 N.E.3d 727 (Ohio Ct. App. 5th Dist. Stark County 2018); Ex parte Cardenas, 557 S.W.3d 722 (Tex. App. Corpus Christi 2018).

The amount of bail set was not abuse of discretion, where, among other things, the defendant did not have a residence or address in the state at the time of arrest. Boo'ze v. State, 846 A.2d 237 (Del. 2004).

Bail of $100,000 on a charge of identity theft was not excessive with respect to a California resident who was a citizen of Nigeria and had no ties to Alabama. Ex parte Egbuonu, 911 So. 2d 748 (Ala. Crim. App. 2004).

4 Robinson v. State, 95 So. 3d 437 (Fla. 5th DCA 2012); Strickland v. Darby, 135 So. 3d 234 (Miss. Ct. App. 2014); Ex Parte Allen-Pieroni, 524 S.W.3d 252 (Tex. App. Waco 2016).

5 Matter of LaBelle, 79 N.Y.2d 350, 582 N.Y.S.2d 970, 591 N.E.2d 1156 (1992).

6 Gusick v. Boies, 72 Ariz. 309, 234 P.2d 430 (1951); State ex rel. Corella v. Miles, 303 Mo. 648, 262 S.W. 364 (1924); Ex parte Cuevas, 130 S.W.3d 148 (Tex. App. El Paso 2003).

7 Braden v. Lady, 276 S.W.2d 664 (Ky. 1955).

8 Phillips v. State, 550 N.E.2d 1290 (Ind. 1990) (abrogated on other grounds by, Fry v. State, 990 N.E.2d 429 (Ind. 2013)).

9 People ex rel. Ryan v. Infante, 108 A.D.2d 987, 485 N.Y.S.2d 852 (3d Dep't 1985).

End of Document

8A Am. Jur. 2d Bail and Recognizance VII C Refs.

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VII. Amount of Bail or Obligation in Lieu of Bail

C. Change of Amount

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bail 8, 53

A.L.R. Library

A.L.R. Index, Bail and Recognizance
West's A.L.R. Digest, Bail 8, 53

End of Document

8A Am. Jur. 2d Bail and Recognizance § 95

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VII. Amount of Bail or Obligation in Lieu of Bail

C. Change of Amount

§ 95. Change of amount of bail, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 8, 53

The right to change the amount of a bail bond is generally governed, at least in part, by statute,[1] and, under such a statute, bail may be altered on a showing of good cause.[2]

A justice of the peace maintains discretion over the amount of bail, including whether the bail is excessive or should be increased, until an indictment has been returned.[3]

Footnotes

1 People v. Officer, 10 Ill. 2d 203, 139 N.E.2d 773 (1957); Ray v. State, 679 N.E.2d 1364 (Ind. Ct. App. 1997).
The statute governing change of conditions of release and corresponding case law governing increase or reduction in bail apply only when a defendant has been released on bail. Jeter v. Commonwealth, 554 S.W.3d 850 (Ky. 2018).

2 Ray v. State, 679 N.E.2d 1364 (Ind. Ct. App. 1997).
While a judge may increase a bond, the judge must have reasons to do so. Miller v. Pulaski County Circuit Court, 284 Ark. 55, 679 S.W.2d 187 (1984).

3 Zarate v. State, 551 S.W.3d 261 (Tex. App. San Antonio 2018), petition for discretionary review filed, (July 27, 2018) and petition for discretionary review refused, (Sept. 12, 2018).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 96

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VII. Amount of Bail or Obligation in Lieu of Bail

C. Change of Amount

§ 96. Increase in amount of bail

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 8, 53

Forms

Forms relating to increasing bail, generally, see Am. Jur. Pleading and Practice Forms, Bail and Recognizance [Westlaw®(r) Search Query]

A court may not arbitrarily increase the amount of bail,[1] and increasing bail without a hearing is arbitrary.[2] Generally, the prosecution must have good cause to seek an increase in the amount of a bail bond.[3]

It has been said that bail in a criminal matter may be increased only if it seems that an increase is necessary to secure the defendant's attendance for trial.[4] A bond may be increased in those circumstances, even though a bond in the amount first set has been posted and the defendant has been released from custody.[5] However, a federal court has the authority to increase a bond despite the lack of evidence presented to show that the defendant has violated or is about to violate a condition of release.[6] Also, an increase in the amount of bail based on a failure to appear may be excessive, where the defendant's failure to appear was unavoidable.[7]

It has been said that an increase in the amount of bond may not be for the purpose of influencing the prisoner to cooperate with the prosecution.[8]

A trial court's decision to increase defendant's bond after the state files an amended information which adds a charge is not an abuse of discretion where the new charge substantially increases the possible penalty defendant faces.[9]

After conviction, a trial court may increase the amount of bail, such an increase generally being within the court's sound discretion.[10]

Footnotes

1 Kraft v. U.S., 238 F.2d 794 (8th Cir. 1956).

2 Stack v. Boyle, 342 U.S. 1, 72 S. Ct. 1, 96 L. Ed. 3 (1951).

3 Creech v. Ryan, 972 So. 2d 1021 (Fla. 3d DCA 2008).
The trial court abused its discretion by increasing defendant's bail from $2,500 surety to $10,000 surety when defense counsel requested a reduction in bail; the state did not make any request or application for an increase of defendant's initial bail amount or present any additional evidence in support of such an increase, and therefore, the state did not make a "showing of good cause" in support of an alteration of bail, and the court was aware of defendant's criminal history when it affirmed the original setting of bail and again set bail at $2,500 surety. Cole v. State, 997 N.E.2d 1143 (Ind. Ct. App. 2013).

4 State ex rel. Ryan v. Kjelstad, 230 Wis. 579, 284 N.W. 554 (1939).
Statements by the defendant that he would not be tried, together with his record for failing to appear and thereby forfeiting bond in the past, formed sufficient grounds for increasing bail. Ex parte Calloway, 98 Tex. Crim. 347, 265 S.W. 699 (1924).

5 State v. Smith, 237 N.C. 1, 74 S.E.2d 291 (1953); Williams v. State, 145 Tex. Crim. 536, 170 S.W.2d 482 (1943).
A court did not abuse its discretion by increasing a bond as a result of the defendant's failure to appear on time on the second day of trial, since the trial court could have reasonably determined that the defendant posed a flight risk. Martin v. State, 176 S.W.3d 887 (Tex. App. Fort Worth 2005).

6 U.S. v. James, 674 F.2d 886 (11th Cir. 1982).

7 Rodriguez v. McRay, 871 So. 2d 1001 (Fla. 3d DCA 2004).

8 People ex rel. Rubenstein v. Warden of City Prison, New York, 279 A.D. 47, 107 N.Y.S.2d 948 (1st Dep't 1951).

9 Brooks v. State, 145 So. 3d 219 (Fla. 1st DCA 2014).

10 Sellers v. U.S., 89 S. Ct. 36, 21 L. Ed. 2d 64 (1968); People v. Officer, 10 Ill. 2d 203, 139 N.E.2d 773 (1957).
A trial court acted within its discretion in setting the amount of bail pending appeal at $10,000 following conviction, even though the defendant claimed that he had no means to make bail and had never previously failed to appear in court, where the defendant had a lengthy criminal history, and made a $5,000 pretrial bond, which was revoked on conviction. Henderson v. State, 236 S.W.3d 814 (Tex. App. Waco 2007).

8A Am. Jur. 2d Bail and Recognizance § 97

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VII. Amount of Bail or Obligation in Lieu of Bail

C. Change of Amount

§ 97. Reduction of amount of bail

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 8, 53

A.L.R. Library

Excessiveness of Bail in State Criminal Cases—Amounts Over $500,000, 7 A.L.R.6th 487

Trial Strategy

Excessive Bail, 18 Am. Jur. Proof of Facts 2d 149

Forms

Forms relating to reduction in bail, generally, see Am. Jur. Pleading and Practice Forms, Bail and Recognizance [Westlaw®(r) Search Query]

In a prosecution for an offense that is bailable, if the bail set is excessive,[1] the court before which the matter is pending should reduce it,[2] considering the usual factors,[3] such as the seriousness of the crime,[4] defendant's ability to pay,[5] defendant's community ties and employment, and the sufficiency of the evidence.[6] Under the Eighth Amendment, federal trial judges have the duty to reduce excessive bail to a reasonable amount.[7]

Observation:

A statute may also require a defendant to be released on personal bond or through the reduction of bail if the prosecution is not ready to proceed to trial within a specified time after the beginning of the defendant's detention.[8]

In seeking a reduction in bail, an accused must present evidence sufficient to overcome the presumption of correctness of the trial court's order.[9] A defendant seeking a reduction in bail must generally make a reasonable showing that he or she is unable to furnish bail in the amount set.[10] While a defendant's ability to afford bail in the amount set does not, in itself, justify bail in that amount, bond will not be reduced where the defendant makes vague references to his or her inability to make bond, without detailing one's specific assets and financial resources.[11] A defendant whose bail amount is reduced on his or her motion for bond reduction is entitled to reconsideration of the motion where it does not appear that the trial court took into consideration defendant's financial resources in setting the amount of bail.[12]

A guilty plea and sentence renders moot a defendant's request for a bail reduction.[13]

Footnotes

1 § 87.

2 Adkins v. Regan, 313 Ky. 695, 233 S.W.2d 402 (1950).
The trial court's order reducing defendant's bail to $200,000 in each case charging defendant with online impersonation, and declining defendant's request to lower bail even more, was not an abuse of discretion; defendant used the names, personas, and telephone numbers of two women he had previously dated to create pages in a commercial social network site with the intent to harm, and defendant attempted to minimize the allegations. Ex Parte Dupuy, 498 S.W.3d 220 (Tex. App. Houston 14th Dist. 2016).

3 Lopez v. State, 985 N.E.2d 358 (Ind. Ct. App. 2013).
For a general discussion of the factors considered in setting bail, see §§ 88 to 94.

4 Jobe v. State, 482 S.W.3d 300 (Tex. App. Eastland 2016), petition for discretionary review refused, (Apr. 6, 2016).

5 Ex parte Davis, 147 S.W.3d 546, 7 A.L.R.6th 829 (Tex. App. Waco 2004) (bail in the amount of $1 million was excessive for a murder defendant and was reduced to $750,000, even though the defendant lived in another county, had disregarded conditions of community supervision, was engaged in narcotics trafficking, knowingly participated in a murder, posed a danger to the community, and had a prior criminal history, where the defendant had inadequate financial resources to make bail of $1 million).

6 Ex parte Keller, 595 S.W.2d 531 (Tex. Crim. App. 1980).

The danger to juveniles posed by the crime of lewd computer solicitation of a child was not a legally relevant factor to justify the denial of a motion to reduce an excessive bond, since the relevant factors are the defendant's financial resources, family ties, length of residence in the community, employment history, past and present conduct, and record of appearing or failing to appear at prior court proceedings, and because the court failed to consider defense counsel's suggestion to bar the defendant's access to the internet as a condition of release. Narducci v. State, 952 So. 2d 622 (Fla. 4th DCA 2007).

7 Stack v. Boyle, 342 U.S. 1, 72 S. Ct. 1, 96 L. Ed. 3 (1951).

8 Ex parte Smith, 486 S.W.3d 62 (Tex. App. Texarkana 2016).

9 Mehaffie v. Rutherford, 143 So. 3d 432 (Fla. 1st DCA 2014).

10 State v. Chivers, 198 La. 1098, 5 So. 2d 363 (1941); Ex parte Cooper, 136 Tex. Crim. 73, 124 S.W.2d 142 (1939).

11 Cooley v. State, 232 S.W.3d 228 (Tex. App. Houston 1st Dist. 2007).

12 Sylvester v. State, 175 So. 3d 813 (Fla. 5th DCA 2014).

13 Leo v. Com., 449 Mass. 1025, 868 N.E.2d 610 (2007).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 98

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VII. Amount of Bail or Obligation in Lieu of Bail

C. Change of Amount

§ 98. Procedure for changing amount of bail

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 8, 53

A.L.R. Library

Excessiveness of Bail in State Criminal Cases—Amounts Over $500,000, 7 A.L.R.6th 487

Trial Strategy

Excessive Bail, 18 Am. Jur. Proof of Facts 2d 149

Forms

Forms relating to motions and orders on form and amount of bail, generally, see Am. Jur. Pleading and Practice Forms, Bail and Recognizance[Westlaw®(r) Search Query]

Some bail bond modification statutes and rules grant a trial court power to modify a bond sua sponte, which permit a district court to modify an initial bail amount after a finding of probable cause, while others empower the court to consider modifying bond upon either party's motion.[1] Under some authority, a trial court may not increase bail on its own motion.[2]

In the absence of compelling circumstances to do otherwise, any application to modify the amount of bail should be made to the same judge who fixed it originally.[3] At least prior to conviction, the method for obtaining this relief is by an application or motion in the trial court.[4] However, as a general rule, habeas corpus may also be used to procure discharge on bail in a proper amount of one who is held under excessive bail, provided, in some jurisdictions, that applications have been first made to the lower court for a bail reduction.[5]

The burden of showing that bail is excessive[6] and that the defendant is entitled to a reduction is on the defendant, and when he or she takes the matter to an appellate court, the defendant must furnish a record showing the matters on which the defendant claims a right to the reduction.[7] On a motion to increase bail, the state bears the burden of affirmatively proving changed circumstances justifying its motion for modification of a bail bond.[8] In reviewing a motion for alteration of bail, credible hearsay evidence may be admissible to establish good cause.[9]

Observation:

A motion to reduce bond is not necessary for a trial court's consideration of the criteria for setting bond.[10]

In some states, where a crime victim has a right to be present for and informed of all critical stages of the criminal justice process, the victim's "right to be heard" includes any court proceeding that involves a reduction or modification of bond.[11]

While a Federal Rule of Criminal Procedure provides that a defendant unable to obtain counsel is entitled to have counsel at every stage of the proceedings from the initial appearance before the magistrate,[12] the failure to provide counsel at a bail reduction hearing does not mandate the dismissal of the charges, where the defendant was unable to show prejudice to his or her defense flowing from that failure.[13]

Footnotes

1 Jeter v. Commonwealth, 554 S.W.3d 850 (Ky. 2018).

2 Knight v. Gee, 161 So. 3d 473 (Fla. 2d DCA 2014).

3 People ex rel. Rubenstein v. Warden of City Prison, New York, 279 A.D. 47, 107 N.Y.S.2d 948 (1st Dep't 1951).

4 Green v. Petit, 222 Ind. 467, 54 N.E.2d 281 (1944).

5 Am. Jur. 2d, Habeas Corpus § 35.

6 Ex Parte Castellanos, 420 S.W.3d 878 (Tex. App. Houston 14th Dist. 2014).

7 Application of Kennedy, 169 Neb. 586, 100 N.W.2d 550 (1960); Ex parte Cheek, 1960 OK CR 69, 355 P.2d 881 (Okla. Crim. App. 1960); Clemons v. State, 220 S.W.3d 176 (Tex. App. Eastland 2007).
A social worker's notes that a detainee was no longer a suicide risk did not entitle the detainee to a reduction in bail, where he failed to present any information that he would continue to follow his treatment regime, if released. Leo v. Com., 442 Mass. 1025, 814 N.E.2d 1077 (2004).

8 Creech v. Ryan, 972 So. 2d 1021 (Fla. 3d DCA 2008) (also holding that if the state does not prove that the information used to demonstrate a change in circumstances was not before the original judge, the bond must be reduced to the level originally set).

9 Ray v. State, 679 N.E.2d 1364 (Ind. Ct. App. 1997).
As to the admissibility of evidence in determining whether to grant bail, see § 58.

10 Hollander v. Crowder, 952 So. 2d 1289 (Fla. 4th DCA 2007).
The criteria are generally discussed in §§ 88 to 94.

11 Gansz v. People, 888 P.2d 256 (Colo. 1995).

12 Fed. R. Crim. P. 44(a), discussed in Am. Jur. 2d, Criminal Law §§ 1086, 1094.

13 U.S. v. Hooker, 418 F. Supp. 476 (M.D. Pa. 1976), aff'd, 547 F.2d 1165 (3d Cir. 1976).

End of Document

8A Am. Jur. 2d Bail and Recognizance VIII A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bail 20, 21, 76, 77(1)

A.L.R. Library

A.L.R. Index, Bail and Recognizance
West's A.L.R. Digest, Bail 20, 21, 76, 77(1)

End of Document

8A Am. Jur. 2d Bail and Recognizance § 99

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

A. In General

§ 99. Rights and liabilities of sureties or depositors of bail money, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 20, 21, 76, 77(1)

When a party posts an appearance bond for the release of a defendant pending criminal proceedings, a suretyship agreement is created[1] in which the defendant is the principal and the State is the creditor.[2] The terms of the bail bond affect the liability of the surety;[3] a bail bond is subject to the same legal principles applicable to the construction and consequences of surety agreements in general.[4] Thus, a bail bond surety's obligation cannot be extended or altered beyond the terms of its agreement;[5] when there is a breach of the bail bond contract between the government and the surety, the surety may not be held liable for any greater undertaking than he or she has agreed to.[6] Generally, however, the obligation of sureties on a bail bond is that they will produce the accused in open court when his or her presence is required in accordance with the terms of the bond.[7] It is the responsibility of the surety on the appearance bond to know the whereabouts of the defendant, to watch the court's calendar, and to see that the defendant appears as ordered.[8] In this regard, a surety assumes the risk of a defendant's failure to appear[9] and the surety, in order to protect its interest, must take steps to prevent a defendant from absconding;[10] every bondsman implicitly agrees to guarantee to seek actively the return of absent defendants.[11]

Footnotes

1 State, City of Bossier City v. Miller, 920 So. 2d 408 (La. Ct. App. 2d Cir. 2006).

2 State v. Calcano, 397 N.J. Super. 302, 937 A.2d 314 (App. Div. 2007).

3 State v. Hampton, 107 Wash. 2d 403, 728 P.2d 1049 (1986).
A bail bond surety is bound according to the strict terms of its undertaking. State v. Calcano, 397 N.J. Super. 302, 937 A.2d 314 (App. Div. 2007).

4 State v. Calcano, 397 N.J. Super. 302, 937 A.2d 314 (App. Div. 2007).

5 State v. Calcano, 397 N.J. Super. 302, 937 A.2d 314 (App. Div. 2007).

6 U.S. v. Martinez, 613 F.2d 473 (3d Cir. 1980); State v. Ericksons, 1987-NMSC-108, 106 N.M. 567, 746 P.2d 1099 (1987).

7 State v. Costello, 489 N.W.2d 735 (Iowa 1992).

8 State v. Sedam, 34 Kan. App. 2d 624, 122 P.3d 829 (2005).

9 In re Bond Forfeiture in Pima County Cause Number CR-20031154, 208 Ariz. 368, 93 P.3d 1084 (Ct. App. Div. 2 2004); State ex rel. Gardner v. Allstar Bail Bonds, 983 So. 2d 1218 (Fla. 5th DCA 2008).
The risk of flight by an illegal alien for whom a surety has posted bail is on the sureties when they posted bail. People v. Diaz-Garcia, 159 P.3d 679 (Colo. App. 2006).

10 State ex rel. Gardner v. Allstar Bail Bonds, 983 So. 2d 1218 (Fla. 5th DCA 2008).

11 Com. v. Hernandez, 2005 PA Super 336, 886 A.2d 231 (2005).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 100

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

A. In General

§ 100. Indemnity and contribution in context of bail bond

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 20, 21, 76, 77(1)

A.L.R. Library

Promise by one other than principal to indemnify one agreeing to become surety or guarantor as within statute of frauds, 13 A.L.R.4th 1153

Where a surety on a bail bond is indemnified by a third party, the penalty risk is shifted to the indemnitor who is the true bonds officer.[1] However, there is some authority for the view that an indemnification agreement regarding a criminal bond or recognizance is void as against public policy.[2]

On the ground that the liability of cosureties on a bail bond is joint, and that their relation is the same as that between cosureties on any other obligation, if one discharges the obligation he or she is entitled on general principles to contribution from the other or others; public policy has been held not to forbid recovery in such case, particularly where it is provided by statute that bail in criminal actions should justify and have the same rights as in civil cases.[3]

A bail bond surety's liability to the state upon an entry of judgment of forfeiture is not affected by a hold-harmless agreement between a surety and another bail bond surety, where the other surety's name is not listed on the bond.[4]

Practice Tip:

In some jurisdictions, sureties on an appearance bond issued by their principal cannot sue their principal before paying all or part of the penal amount of the bonds; the surety's right of action accrues at the time of payment, not before and furthermore, a surety's cause of action does not accrue where forfeiture of an appearance bond is ordered and the principal has evaded process by leaving the jurisdiction; additionally, these rules of law have been substantially codified by statute in some jurisdictions.[5]

Footnotes

1 United Bonding Ins. Co. v. Tuggle, 216 So. 2d 80 (Fla. 2d DCA 1968).

2 Sansome v. Samuelson, 222 Minn. 417, 24 N.W.2d 702, 170 A.L.R. 1158 (1946).

3 Sansome v. Samuelson, 222 Minn. 417, 24 N.W.2d 702, 170 A.L.R. 1158 (1946).

4 State v. Pacheco, 143 N.M. 851, 2008-NMCA-055, 182 P.3d 834 (Ct. App. 2008).
Forfeiture of bond, generally, see §§ 127 to 140.

5 Harshaw v. Mustafa, 321 N.C. 288, 362 S.E.2d 541 (1987).

8A Am. Jur. 2d Bail and Recognizance VIII B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

B. Right to Arrest or Surrender Principal

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bail 23, 24, 79, 80

A.L.R. Library

A.L.R. Index, Bail and Recognizance
A.L.R. Index, Federal Bail Reform Act
West's A.L.R. Digest, Bail 23, 24, 79, 80

End of Document

8A Am. Jur. 2d Bail and Recognizance § 101

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

B. Right to Arrest or Surrender Principal

§ 101. Right to arrest or surrender principal on bail bond, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 24, 79, 80

Bondsmen are vested with broad powers to bring their principals to court.[1] However, while a surety has the authority to arrest a defendant,[2] a surety may not shackle, confine, or impede the principal in his or her daily movements, even though the state may so restrict defendants in its custody; rather, the bail arrangement implies only that the surety obtains sufficient control over the principal to assure his or her appearances, to prevent disappearances, and to surrender the principal in discharge of the surety's obligation to the state.[3]

Observation:

The powers given the bail over his or her principal are given to enable him or her more easily to perform the onerous duties and obligations which he or she has voluntarily assumed.[4]

A surety's or bail bondsmen's authority to arrest and surrender the principal derives from three overlapping sources: (1) the common law,[5] (2) statutory authorization,[6] and (3) the contract between the surety and principal.[7] It has been said, in regard to the contractual source of this authority, that the right of the surety to arrest arises from the relationship between the principal

and his bail, and not from the state through subrogation,[8] and that a bond agreement establishes the surety's and bondsman's right of recapture as private in nature, with the understanding that the government will not interfere.[9]

Bail bondsmen do not have the authority to surrender a principal for civil debt.[10]

Under the applicable federal statute, a person charged with an offense, who is released upon the execution of an appearance bond with a surety, may be arrested by the surety, and if so arrested, must be delivered promptly to a United States marshal and brought before a judicial officer.[11]

CUMULATIVE SUPPLEMENT

Cases:

Montana law recognizes a bondsman's privilege to arrest a defendant for whom a bail bond has been posted. Mitchell v. First Call Bail and Surety, Inc., 412 F. Supp. 3d 1208 (D. Mont. 2019).

[END OF SUPPLEMENT]

Footnotes

1 State v. Gonzalez-Fernandez, 170 N.C. App. 45, 612 S.E.2d 148 (2005).
A surety and his agents have the lawful authority to apprehend, detain, and deliver the principal to the courthouse. Com. v. Cabral, 443 Mass. 171, 819 N.E.2d 951 (2005).

2 State v. Two Jinn, Inc., 150 Idaho 264, 245 P.3d 1016 (Ct. App. 2010).

3 Com. v. Cabral, 443 Mass. 171, 819 N.E.2d 951 (2005).

4 State v. Mathis, 349 N.C. 503, 509 S.E.2d 155 (1998).

5 State v. Burhans, 277 Kan. 858, 89 P.3d 629 (2004); Com. v. Cabral, 443 Mass. 171, 819 N.E.2d 951 (2005); State v. Tapia, 468 N.W.2d 342 (Minn. Ct. App. 1991); State v. Mathis, 349 N.C. 503, 509 S.E.2d 155 (1998).
At common law, a surety had the custody of the principal. Com. v. Cabral, 443 Mass. 171, 819 N.E.2d 951 (2005).

6 State v. Burhans, 277 Kan. 858, 89 P.3d 629 (2004); Com. v. Cabral, 443 Mass. 171, 819 N.E.2d 951 (2005); State v. Tapia, 468 N.W.2d 342 (Minn. Ct. App. 1991); State v. Mathis, 349 N.C. 503, 509 S.E.2d 155 (1998).

7 State v. Tapia, 468 N.W.2d 342 (Minn. Ct. App. 1991).
A fugitive authorized his apprehension by bail bond agency or its agent and waived any tort claims that might have arisen through reasonable enforcement of the bail contracts. Lee v. Thorpe, 2006 UT 66, 147 P.3d 443 (Utah 2006).

8 Brooks v. Pennington, 995 So. 2d 733 (Miss. Ct. App. 2007).

9 State v. Mathis, 349 N.C. 503, 509 S.E.2d 155 (1998).

10 Brooks v. Pennington, 995 So. 2d 733 (Miss. Ct. App. 2007).

11 18 U.S.C.A. § 3149.

8A Am. Jur. 2d Bail and Recognizance § 102

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

B. Right to Arrest or Surrender Principal

§ 102. Procedure to arrest or surrender principal on bail bond, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 24, 79, 80

Forms

Forms relating to arresting principal, generally, see Am. Jur. Pleading and Practice Forms, Bail and Recognizance [Westlaw®(r) Search Query]

At common law, a bail bonds officer, or surety, could seize a bailed individual, or principal without resort to the legal system.[1] A bail bonds officer may use whatever reasonable means are necessary to fulfill an obligation to ensure his or her principal's appearance in court, and, absent a statute, requires no legal process, judicial or administrative, to effect that purpose.[2]

Professional bonds officers in the United States enjoy extraordinary powers to capture and use force to compel preemptory return of a bail jumper.[3] Under the common law as it pertains to bond agreements, a surety may use reasonable force to apprehend the principal[4] and in some jurisdictions, statutes concerning a surety's right to surrender a principal do not place any limits on the surety's actions while effecting a surrender, and the statutes do not address the relationship between a principal and a surety or purport to govern how the surety could exercise custody over the principal.[5]

However, state statutes, in some instances, have required a surety to follow certain procedures in arresting a principal,[6] such as securing an arrest warrant before attempting to arrest and surrender an unwilling principal,[7] and to abide by the restrictions set out by the legislature and the courts of the state.[8] In some states, statutes set forth the procedures by which the surety on a

defendant's bail bond may obtain from the clerk of the court with jurisdiction over the defendant a document that would allow the surety to arrest the defendant in order to guaranty the defendant's appearance in court, which document is termed a "bonds officer's process."[9]

The failure to follow the procedure, and abide by the restrictions set out by the legislature and the courts of the state with regard to the arrest of defendants who have jumped bail, can render the arrest or attempted arrest unlawful.[10] More specifically, where a statute specifies that a bonds officer's agents must carry a certified copy of the undertaking endorsed by the bonds officer, to be exhibited to the principal when arresting him or her, failure to do so renders the arrest unlawful.[11] Also in this regard, it has been said that the course of action pursued by an agent for an insurance bonding company in apprehending the principal on a bail bond is not without its risks and a bonds officer might very well be liable in tort if he or she oversteps the bounds of his or her authority.[12]

Observation:

The common-law rule allowing out-of-state bail bondsmen and bounty hunters to enter the state to apprehend fugitive bailees may be abrogated by statutes governing bail bondsmen and bounty hunters, requiring that bail bondsmen and bounty hunters be licensed in the state in order to have the authority to enter the state and apprehend a fugitive bailee.[13]

Practice Tip:

A bail bond principal's arrest under a warrant does not collaterally estop a principal in a subsequent civil suit from relitigating the reasonableness of his or her surrender by a bail bonds officer.[14]

Footnotes

1 Com. v. Wilkinson, 415 Mass. 402, 613 N.E.2d 914 (1993).

2 State v. Nugent, 199 Conn. 537, 508 A.2d 728 (1986).

3 Kear v. Hilton, 699 F.2d 181 (4th Cir. 1983); State v. Nugent, 199 Conn. 537, 508 A.2d 728 (1986).

4 State v. Mathis, 349 N.C. 503, 509 S.E.2d 155 (1998).

5 Com. v. Cabral, 443 Mass. 171, 819 N.E.2d 951 (2005).

6 O.K. Bonding Co., Inc. v. Milton, 579 So. 2d 602 (Ala. 1991), (possession, by the surety, of a certified copy of the bond at the time the arrest is made).

7 Austin v. State, 541 S.W.2d 162 (Tex. Crim. App. 1976).

8 O.K. Bonding Co., Inc. v. Milton, 579 So. 2d 602 (Ala. 1991).

9 State v. Blake, 642 So. 2d 959 (Ala. 1994).

10 O.K. Bonding Co., Inc. v. Milton, 579 So. 2d 602 (Ala. 1991).

11 Poteete v. Olive, 527 S.W.2d 84 (Tenn. 1975).
Delegation of authority to agents, see § 103.

12 State v. Nugent, 199 Conn. 537, 508 A.2d 728 (1986).

13 Collins v. Com., 283 Va. 263, 720 S.E.2d 530 (2012).

14 Robbins v. Roberts, 833 S.W.2d 619 (Tex. App. Amarillo 1992).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 103

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

B. Right to Arrest or Surrender Principal

§ 103. Delegation of authority to arrest or surrender principal on bail bond

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 24, 79, 80

At common law, a surety is permitted to seize the principal him- or herself or to engage an agent to do so.[1] An agent's authority to arrest may also arise from a bail contract.[2] Additionally, state statutes have sometimes specifically authorized agents of sureties to arrest defendants who "jump bail," under certain circumstances.[3] Other statutes have provided that a surety on such a bond could, by written authority endorsed on a certified copy of the recognizance, bond or undertaking, empower any officer or person of suitable age and discretion, to arrest any party charged with a criminal offense and admitted to bail.[4] Where a statute provides the manner in which the power of arrest may be delegated by the bail bonds officer, that provision must be followed or the rearrest is invalid.[5]

A bail bond agent has the authority to make an arrest even though the bail bond agent no longer works for the surety company that issued the bail bond, and instead works for another surety company.[6]

Footnotes

1 Com. v. Cabral, 443 Mass. 171, 819 N.E.2d 951 (2005).

2 Lee v. Langley, 2005 UT App 339, 121 P.3d 33 (Utah Ct. App. 2005), aff'd, 2006 UT 66, 147 P.3d 443 (Utah 2006) (an unlicensed bail recovery agent has the power to lawfully make an arrest if the agent is acting on a bail bond surety's behalf where the arrestee personally and expressly authorized his apprehension by the surety or its agent).

3 O.K. Bonding Co., Inc. v. Milton, 579 So. 2d 602 (Ala. 1991).

4 Hudson v. State, 1962 OK CR 112, 375 P.2d 164 (Okla. Crim. App. 1962).

5 Register v. Barton, 75 So. 2d 187 (Fla. 1954).

6 Leader v. Reiner, 143 Idaho 635, 151 P.3d 831 (2007).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 104

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

B. Right to Arrest or Surrender Principal

§ 104. Time of arrest of principal on bail bond

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 24, 79, 80

The right of sureties on a bail bond to take their principal into custody for the purpose of surrendering him or her in exoneration of their liability may, in general, be exercised whenever they choose.[1] In this regard, it has been said that at common law, a surety had the custody of the principal, and could take him or her at any time.[2]

Footnotes

1 Jordan v. Knight, 250 Ala. 109, 35 So. 2d 178 (1948); State v. Pelley, 222 N.C. 684, 24 S.E.2d 635 (1943).
A state statute provided, in part, that any party charged with a criminal offense and admitted to bail may be arrested by his or her bail at any time before they are finally discharged. Hudson v. State, 1962 OK CR 112, 375 P.2d 164 (Okla. Crim. App. 1962).
Exoneration of liability of a surety, generally, see §§ 107 to 113.

2 Com. v. Cabral, 443 Mass. 171, 819 N.E.2d 951 (2005).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 105

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

B. Right to Arrest or Surrender Principal

§ 105. Place of arrest of principal on bail bond

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 24, 79, 80

The right of sureties on a bail bond or recognizance to arrest or take the principal into custody for the purpose of surrendering him or her may, in general, be exercised at any place in the state.[1]

At common law, a bail bonds officer, or surety's right to seize a bailed individual was held to follow the principal over state lines, and a surety could arrest his or her principal in any state and surrender him or her to the state where the principal was charged without new process,[2] even if doing so exposes the agent to criminal liability.[3]

Observation:

It has been noted that the extraordinary powers professional bonds officers in the United States are afforded to capture and use force to compel preemptory return of a bail jumper, apply not only in the state where the bail was granted, but in other states as well, without resort to public authorities—either to the police to effect arrest or the appropriate state officials to bring about extradition.[4]

Footnotes

1 State v. Costello, 489 N.W.2d 735 (Iowa 1992); Com. v. Cabral, 443 Mass. 171, 819 N.E.2d 951 (2005). A state statute provided that any party charged with a criminal offense and admitted to bail may be arrested by his bail, inter alia, at any place within the state. Hudson v. State, 1962 OK CR 112, 375 P.2d 164 (Okla. Crim. App. 1962).

2 Com. v. Wilkinson, 415 Mass. 402, 613 N.E.2d 914 (1993).

3 Lee v. Thorpe, 2006 UT 66, 147 P.3d 443 (Utah 2006).

4 Kear v. Hilton, 699 F.2d 181 (4th Cir. 1983); State v. Nugent, 199 Conn. 537, 508 A.2d 728 (1986).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 106

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

B. Right to Arrest or Surrender Principal

§ 106. Propriety of forcible entry to arrest principal on bail bond

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 24, 79, 80

By entering into a bond agreement, not only does the principal voluntarily consent to be committed to the custody of the surety, but under common law, he or she also implicitly agrees that the surety or the surety's agent may break and enter the principal's home and use reasonable force in apprehending him or her.[1] Under the United States Supreme Court's decision in *Taylor v. Taintor,* sureties on a bail bond are deemed to be entitled to break open the doors of the home of the principal to effect his or her arrest where the principal refuses to surrender on notice to do so, based on the reasoning that arrest of a criminal defendant by the surety is regarded as in the nature of arrest and detention of a criminal rather than as service of process.[2]

Caution:

In one jurisdiction it has been held that *Taylor v. Taintor* is not the law, and that statutory guidelines have replaced the common law and define the law as it applies to sureties who seek to apprehend principals.[3]

In any event, a bail bonds officer generally does not have authority to forcibly enter a third-party residence in pursuit of his or her principal[4] although a bail bondsman may forcibly enter the principal's residence to search for and seize him or her, even when the principal resides in the home of a third party.[5]

CUMULATIVE SUPPLEMENT

Cases:

A bondsman's forcible entry into a third party's dwelling to arrest a principal subject to the bond, who does not reside there and who has not been observed there, may expose the bondsman to successful prosecution for criminal trespass or assault. Williams v. C-U-Out Bail Bonds, LLC, 450 P.3d 330 (Kan. 2019).

[END OF SUPPLEMENT]

Footnotes

1 State v. Mathis, 349 N.C. 503, 509 S.E.2d 155 (1998).

2 Taylor v. Taintor, 83 U.S. 366, 21 L. Ed. 287, 1872 WL 15393 (1872).

3 Green v. State, 829 S.W.2d 222 (Tex. Crim. App. 1992).

4 State v. Burhans, 277 Kan. 858, 89 P.3d 629 (2004); State v. Tapia, 468 N.W.2d 342 (Minn. Ct. App. 1991); State v. Lopez, 105 N.M. 538, 1986-NMCA-094, 734 P.2d 778 (Ct. App. 1986) (holding modified on other grounds by, State v. Baca, 1992-NMSC-055, 114 N.M. 668, 845 P.2d 762 (1992)).

5 State v. Mathis, 349 N.C. 503, 509 S.E.2d 155 (1998) (the principal was living in his mother's home).

8A Am. Jur. 2d Bail and Recognizance VIII C Refs.

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

C. Exoneration or Discharge of Surety, in General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bail 23, 24, 62, 74(2), 79, 80

A.L.R. Library

A.L.R. Index, Bail and Recognizance
A.L.R. Index, Federal Bail Reform Act
West's A.L.R. Digest, Bail 23, 24, 62, 74(2), 79, 80

End of Document

8A Am. Jur. 2d Bail and Recognizance § 107

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

C. Exoneration or Discharge of Surety, in General

§ 107. Exoneration or discharge of surety on bail bond, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 74(2), 79

A.L.R. Library

Change in terms or conditions under which accused in federal criminal case was originally released on bail as affecting surety's liability on bail bond, 24 A.L.R. Fed. 580

Forms

Forms relating to satisfied conditions, generally, see Am. Jur. Pleading and Practice Forms, Bail and Recognizance [Westlaw®(r) Search Query]

When the conditions of a bail bond are met,[1] or the bond is canceled by the court for any reason, the surety is exonerated.[2] Generally speaking, if the defendant appears at the times and places specified in the bail bond, and continues in the presence of the court until the terms of the bond are fulfilled, the sureties are exonerated.[3]

It has sometimes been said that to obtain exoneration, the principal and his or her sureties must show an uncontrollable circumstance, not the fault of the principal, which prevented the principal from appearing before the forfeiture was taken, and the

principal must appear before entry of final judgment or show sufficient cause for his or her failure to do so;[4] an "uncontrollable circumstance," justifying a surety's exoneration from liability on the bond as a matter of law, truly should be "uncontrollable."[5] In this regard, a surety is entitled to discharge as a matter of law when the principal is prevented from making his or her bonded appearance by an act of God.[6] Under some statutes, if good cause is shown for defendant's failure to appear before judgment is entered against a surety, a court must exonerate a reasonable amount of the surety's liability under the bail bond.[7]

When a bail bond agreement between the state and defendant's bail surety incorporates a bail bond statute which provides that the trial court "shall not" exonerate the surety except under certain enumerated circumstances, the trial court has no discretion under principles of contract to exonerate the surety on the bail bond under circumstances falling outside the scope of the statute.[8] Some statutes require, for the surety to be discharged after a conditional judgment has been entered, not only that the surety arrest and deliver the defendant to the sheriff, but also that the surety had to give a good and sufficient excuse for the failure of the defendant to appear at the time the conditional judgment was entered.[9]

State statutes have sometimes provided that a surety may be exonerated not only when the defendant has been surrendered into custody, but when the condition of the bond has been satisfied, or when the amount of the forfeiture has been paid.[10]

Practice Tip:

A surety is bound by its obligation until discharged by order of the court; should an inordinate delay occur, the surety is free to petition the court for appropriate relief.[11] The defendant, on the other hand, may invoke the constitutional right to a speedy trial should it be applicable.[12]

Under the Federal Rules of Criminal Procedure, the court must exonerate the surety and release any bail when a bond condition has been satisfied or when the court has set aside or remitted the forfeiture.[13] The court must also exonerate a surety who deposits cash in the amount of the bond.[14]

Under federal statute, when military service prevents the surety from obtaining the attendance of the principal, the court may discharge the surety and exonerate the bail, in accordance with principles of equity and justice, during or after the period of military service of the principal.[15]

Footnotes

1 State v. Wilson, 202 S.W.3d 665 (Mo. Ct. App. W.D. 2006); Com. v. Hill, 180 Pa. Super. 430, 119 A.2d 572 (1956).

2 State v. Johnson, 56 Ohio L. Abs. 305, 92 N.E.2d 24 (Ct. App. 2d Dist. Darke County 1949).

3 Com. v. Hill, 180 Pa. Super. 430, 119 A.2d 572 (1956).
Voluntary appearance of principal as exonerating or discharging surety on bail bond, generally, see § 113.

4 Fernandez v. State, 516 S.W.2d 677 (Tex. Crim. App. 1974).

Forfeiture, generally, see §§ 127 to 140.

5 Allegheny Cas. Co. v. State, 163 S.W.3d 220 (Tex. App. El Paso 2005).

6 State v. Wilson, 202 S.W.3d 665 (Mo. Ct. App. W.D. 2006).

7 Hot Springs Bail Bond v. State, 90 Ark. App. 370, 206 S.W.3d 306 (2005); State v. Holmes, 57 Ohio St. 3d 11, 564 N.E.2d 1066 (1991) (where the statute provided, in part, that if good cause by production of the body of the accused or otherwise is not shown, the court or magistrate must enter judgment against the sureties or either of them).

8 All Star Bail Bonds, Inc. v. Eighth Jud. Dist. Ct., 130 Nev. 419, 326 P.3d 1107, 130 Nev. Adv. Op. No. 45 (2014).

9 Kirby v. State, 416 So. 2d 1010 (Ala. 1982), stating that the statute clearly stated that the trial judge has to rule on the issue of the sufficiency of the excuse.

10 People v. Caro, 753 P.2d 196 (Colo. 1988).

11 Livingston Bail Bonds v. State, 416 So. 2d 423, 32 A.L.R.4th 594 (Ala. 1982).

12 Livingston Bail Bonds v. State, 416 So. 2d 423, 32 A.L.R.4th 594 (Ala. 1982).

13 Fed. R. Crim. P. 46(g).

14 Fed. R. Crim. P. 46(g).

15 50 U.S.C.A. § 3913(c).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 108

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

C. Exoneration or Discharge of Surety, in General

§ 108. Death of principal as exonerating or discharging surety on bail bond

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 74(2), 79

A.L.R. Library

Death of principal as exoneration, defense, or ground for relief, of sureties on bail or appearance bond, 63 A.L.R.2d 830

Forms

Forms relating to death, generally, see Am. Jur. Pleading and Practice Forms, Bail and Recognizance [Westlaw®(r) Search Query]

The death of the principal before the date on which he or she is obliged to appear exonerates the liability of the bonds officer;[1] or, as sometimes stated, if the principal dies, this act of God discharges the surety.[2] In this regard, a trial court did not err in discharging a bonding company from liability on an appearance bond when the defendant died before the bond forfeiture hearing and the court's order provided that production of the defendant before that hearing would stay the effect of the forfeiture order.[3] However, under a state statute, the death of the principal after a judgment declaring forfeiture but before final judgment

did not exonerate the surety,[4] although there is also some authority for the view that where the principal dies after forfeiture, but before the entry of judgment, the sureties are discharged from liability.[5]

A defendant's alleged death would not exonerate sureties from liability on a bond where there was no factual proof that the defendant's body was ever recovered, nor was it established that he was on a particular vessel when it caught fire and burned.[6]

Footnotes

1 U.S. v. Barnett, 22 F. Supp. 394 (E.D. Ky. 1938).

2 Tyler v. Capitol Indem. Ins. Co., 206 Md. 129, 110 A.2d 528 (1955).

3 Washington County v. Goldberg Bonding, Inc., 388 N.W.2d 20 (Minn. Ct. App. 1986).
Forfeiture, generally, see §§ 127 to 140.

4 Hernden v. State, 505 S.W.2d 546 (Tex. Crim. App. 1974).

5 Western Sur. Co. v. People, 120 Colo. 357, 208 P.2d 1164 (1949).

6 U.S. v. Frias-Ramirez, 670 F.2d 849 (9th Cir. 1982).

8A Am. Jur. 2d Bail and Recognizance § 109

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

C. Exoneration or Discharge of Surety, in General

§ 109. Acts or qualifications of surety as exonerating or discharging surety on bail bond

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 74(2), 79

That bail bonds were executed by an insurance agent who has not complied with statutes requiring the state residence and licensing of insurance agents will not exonerate the insurer from liability on the bonds.[1] Furthermore, that a surety has not signed a "justification of sureties" form does not necessarily free the surety from his or her obligation under a bail bond.[2]

Footnotes

1 State v. Sellers, 258 N.W.2d 292 (Iowa 1977).

2 U.S. v. Noriega-Sarabia, 116 F.3d 417 (9th Cir. 1997).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 110

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

C. Exoneration or Discharge of Surety, in General

§ 110. Acts or omissions of government bodies or officials preventing performance or increasing risk as exonerating or discharging surety on bail bond

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 62, 74(2), 79

Where the sovereign to which a bail bond is given by its own acts makes performance of the conditions of the bond impossible, the sureties are exonerated from liability under the bond.[1] Thus, a surety is entitled to discharge as a matter of law when the principal is prevented from making his or her bonded appearance by an act of the obligee, the state.[2] Where the performance of the terms of the bond is prevented by the act of the governor of the state in surrendering the principal in the bail bond to another jurisdiction, the terms of the bond are violated by the sovereign and the sureties on the bail bond are exonerated from their liability.[3] On the other hand, since the state is not under a duty to take affirmative acts to return a defaulting principal to its jurisdiction, its failure to do so will not exonerate the bail bonds officers from their liability.[4]

A material modification which alters the surety's obligation under the appearance bond will discharge the surety.[5] More specifically, if the surety on an appearance bond has notice of a material change to bond conditions and consents to it, the surety remains liable, but absent notice and an opportunity to revoke its commitment, a material change in risk can discharge the surety's obligation.[6] That is, a bail bond surety will be discharged as a matter of law where the agreement has been modified without notice and consent and where the modification materially increases his or her risk.[7] In this regard, it has been noted, with reference to a provision of the Restatement of Security, that not every "event" which materially increases the risk discharges the surety, but that only modifications in the conditions of the bond agreement by the principal—the defendant—and the creditor—the court—without the consent of the surety which materially increase the risk which the surety, as an original matter, agreed to assume under the bond contract discharge the surety.[8] It is to the bond agreement, then, that courts must look to determine whether a trial court's actions "materially increased" the risk.[9]

A bail bond is a three-party contract between the state, the accused, and the surety, and interference by the state with the surety's right to control the accused constitutes a substantial breach of the surety contract which discharges the surety.[10]

Under some authority, the addition of charges based on the same acts alleged in an original complaint, which charges materially increase the risk faced by the surety, does not automatically exonerate a bail bond.[11] However, it has also been held that where the criminal charges are substantially changed from the charges on which the bail bond was originally written, the surety is no longer obligated under the bond.[12] Under this view, criminal charges are considered to be substantially changed from the charges on which the bail bond was originally written, so that the surety is no longer obligated under the bond, where the likelihood of flight is much greater on the amended charge due to greater maximum penalties.[13]

Observation:

A court cannot, with the sureties' consent, revive their liability by simply ordering that the defendant be held under his or her present bond; that would be the making of a contract, for the sureties and without their consent, by the court.[14]

A failure by the government and by the court to notify a surety of defendant's failure to appear does not release the surety from its obligations under the appearance bond, even if the surety does not realize that the defendant has absconded until months have passed, where defendant is not apprehended for another substantial period, and the surety does not assist in any way in the search during that time.[15]

Footnotes

1 U.S. v. Vendetti, 33 F. Supp. 34 (D. Mass. 1940); Warren v. State, 179 So. 2d 181 (Miss. 1965); State v. Liakas, 165 Neb. 503, 86 N.W.2d 373 (1957).

2 State v. Wilson, 202 S.W.3d 665 (Mo. Ct. App. W.D. 2006).

3 State v. Liakas, 165 Neb. 503, 86 N.W.2d 373 (1957).

4 State v. Honey, 165 Neb. 494, 86 N.W.2d 187 (1957); Griffith v. State, 450 S.W.2d 89 (Tex. Crim. App. 1970).

5 State v. Sedam, 34 Kan. App. 2d 624, 122 P.3d 829 (2005).

6 U.S. v. Mohammed-Ali, 822 F.3d 312 (6th Cir. 2016).

7 U.S. v. Gambino, 17 F.3d 572 (2d Cir. 1994) (the notice and consent may be inferred by circumstantial evidence, and do not require direct proof); State v. Calcano, 397 N.J. Super. 302, 937 A.2d 314 (App. Div. 2007).

Even though a bail bond surety did not get the required notice of a changed condition, consisting of a federal district court's grant of a defendant's request for return of his passport so that he could visit a family member in Nigeria, the surety's obligation was not discharged, where the defendant, who had a history of flight, in fact returned to New York after the visit, where the bond allowed him to reside, and only then vanished; the surety had the burden to demonstrate that the defendant's disappearance was attributable to an incremental risk from the return of the passport rather than the original risk. U.S. v. King, 349 F.3d 964 (7th Cir. 2003).

8 People v. Tyler, 797 P.2d 22 (Colo. 1990), referring to Restatement First, Security § 128.

9 People v. Tyler, 797 P.2d 22 (Colo. 1990).

10 Universal Bail Bonds, Inc. v. State, 929 So. 2d 697 (Fla. 3d DCA 2006).
Right to arrest or surrender principal, see §§ 101 to 106.

11 People v. Indiana Lumbermens Mutual Ins. Co., 202 Cal. App. 4th 1541, 136 Cal. Rptr. 3d 570 (2d Dist. 2012).

12 A-Alternative Release Bail Bonds v. Martin County, 882 So. 2d 414 (Fla. 4th DCA 2004).

13 Integrity Bail Bonds v. Pinellas County Bd. of County Com'rs, 884 So. 2d 85 (Fla. 2d DCA 2004).

14 Rice v. State, 488 So. 2d 1351 (Ala. 1986).

15 U.S. v. Parrett, 486 Fed. Appx. 544 (6th Cir. 2012).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 111

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

C. Exoneration or Discharge of Surety, in General

§ 111. Acts or omissions of government bodies or officials preventing performance or increasing risk as exonerating or discharging surety on bail bond—Failure to provide timely notice of forfeiture

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 74(2), 79

Under some state statutes, where the defendant and the sureties fail to receive notice of a conditional forfeiture order within the time prescribed by statute, the surety's liability will be discharged.[1] However, there is authority that while the failure to provide notice of forfeiture of a bail bond pursuant to a state statute would entitle a surety to have a bond forfeiture vacated, it would not entitle the surety to have the bond discharged unless the surety could prove by competent evidence that it was prejudiced by the state's failure to comply.[2]

Footnotes

1 State v. Blake, 642 So. 2d 959 (Ala. 1994).
A district court's failure to mail notice of judgment of bond forfeiture within 60 days resulted in the surety's release by operation of law, and thus the surety was not required to file a motion to set aside the bond forfeiture within 60 days of the mailing of the notice. State v. Nix, 195 So. 3d 691 (La. Ct. App. 4th Cir. 2016), writ denied, 219 So. 3d 1103 (La. 2017).
Forfeiture, generally, see §§ 127 to 140.

2 Accredited Sur. & Cas. Co. v. Putnam County, 561 So. 2d 1243 (Fla. 5th DCA 1990).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 112

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

C. Exoneration or Discharge of Surety, in General

§ 112. Arrest and confinement of accused as exonerating or discharging surety on bail bond; extradition

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 74(2), 79

A.L.R. Library

Bail: effect on surety's liability under bail bond of principal's subsequent incarceration in same jurisdiction, 35 A.L.R.4th 1192

Forms

Forms relating to extradition or imprisonment, generally, see Am. Jur. Pleading and Practice Forms, Bail and Recognizance [Westlaw®(r) Search Query]

The rule followed in some jurisdictions is that a surety is discharged if, after giving bail, the accused is rearrested on the same charge or for the same offense.[1] Thus, a bail bond surety is released from liability on a bond when verification of the principal's incarceration in another jurisdiction is requested and the sheriff is able to verify that incarceration.[2] However, it has also been held that, a defendant's departure from the state without leave of the court while on bail pending appeal, and his or her subsequent incarceration in another state, is not sufficient to exonerate the sureties upon the appeal bond, even though the

defendant offers to return to the state without extradition after forfeiture and, as a result of the bonds officers' due diligence, the defendant subsequently returns to the state.[3]

When extradition is accomplished, the surety is no longer able to perform his or her obligation under the contract to deliver the defendant to court and thus, in some jurisdictions it has been said that the surety should be released from liability when estreatment is ordered for nonappearance after defendant has been extradited.[4]

Observation:

The mere fact of a deportation of a bail bond principal, without more, is not sufficient to trigger a release from liability on the part of a surety as a matter of law.[5]

There is authority for the view that when the principal in a criminal recognizance, conditioned for his or her appearance to answer a specific criminal charge, is thereafter arrested before judgment is executed on the bond for an entirely different crime and remains in the custody of the state, the sureties on the bond are released; this release has been said to arise from the sureties' inability to produce their principal to answer the charge caused by the state assuming custody of their principal to which they were then entitled.[6] On the other hand, there is also some authority to the effect that a defendant's rearrest for a different offense does not operate to relieve the sureties on the defendant's original bond, even though the rearrest occurs within the same state.[7]

Under a state statute prescribing the methods of exoneration of a surety's liability bail bond, the surety is not relieved of liability on the bond when the principal escapes from detention for a second offense before the principal's appearance date under the bail bond, where such circumstances are not within the statutory methods of exoneration.[8]

Footnotes

1 Ex parte A-1 Bonding Co. of Montgomery, Inc., 420 So. 2d 781 (Ala. 1982); Accredited Sur. and Cas. Co., Inc. v. State, for Use and Benefit of Hillsborough County, 383 So. 2d 308 (Fla. 2d DCA 1980); Com. v. Stuyvesant Ins. Co., 366 Mass. 611, 321 N.E.2d 811 (1975).

2 Allegheny Cas. Co. v. State, 163 S.W.3d 220 (Tex. App. El Paso 2005).

3 State v. Davidson, 1975 OK CIV APP 50, 544 P.2d 1292 (Ct. App. Div. 2 1975).

4 State v. Boatwright, 310 S.C. 281, 423 S.E.2d 139 (1992).

5 Allegheny Cas. Co. v. State, 163 S.W.3d 220 (Tex. App. El Paso 2005).

6 Sunrise Bonding Co. v. Busbee, 165 Ga. App. 83, 299 S.E.2d 153, 35 A.L.R.4th 1188 (1983).

7 Ex parte A-1 Bonding Co. of Montgomery, Inc., 420 So. 2d 781 (Ala. 1982).

8 People v. Jaramillo, 163 Colo. 39, 428 P.2d 67 (1967).

8A Am. Jur. 2d Bail and Recognizance § 113

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

C. Exoneration or Discharge of Surety, in General

§ 113. Surrender of principal as exonerating or discharging surety on bail bond; voluntary appearance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 24, 80

Forms

Forms relating to surrender, generally, see Am. Jur. Pleading and Practice Forms, Bail and Recognizance [Westlaw®(r) Search Query]

Under the common law, the sureties on a bail bond may surrender the defendant or principal to the proper officers of the court in which the proceeding is pending in discharge of their liability at any time before default[1] or before forfeiture of the bond or recognizance.[2]

Furthermore, under the Federal Rules of Criminal Procedure, a surety may be exonerated by a timely surrender of the defendant into custody[3] and a federal statute provides that where a person charged with an offense is arrested by his or her surety and delivered to a United States marshal and brought before a judicial officer, the judicial officer may absolve the surety of responsibility to pay all or part of the bond in accordance with the applicable rule.[4]

Procedural rules in some states have specifically permitted exoneration by a timely surrender of the defendant into custody.[5] Additionally, state statutes have sometimes provide that, at any time before the forfeiture is undertaken, a surety may surrender the defendant for detention to the officer to whose custody the defendant was committed at the time of giving bail, and, upon

proof of the surrender of the defendant, the court must order an exoneration of the surety.[6] A statute, providing in part, that if good cause by (among other things) the production of the body of the accused is not shown, the court or magistrate must enter judgment against the sureties, has been construed as providing, by implication, that a surety may be exonerated if good cause by production of the body of the accused is shown.[7] Some statutes have provided that a surety on a bond is released by surrendering the defendant to the custody of law enforcement[8] such as a sheriff[9] or the chief of police or the sheriff's or chief's authorized subordinate.[10] Also, under some states' laws, if the accused fails to appear in accordance with the terms of the bail bond, a surety will be exonerated if he or she surrenders the defendant into custody and pays all costs occasioned by the defendant's failure to appear at the time set.[11]

Observation:

Statutes concerning a surety's right to surrender a principal do not expressly codify, modify, or abrogate the scope of the common-law right of a surety to apprehend and detain a principal in order to exonerate bail.[12]

In some jurisdictions, where a defendant appears voluntarily for sentencing following his or her conviction, the appearance exonerates the sureties on his or her bail bond.[13] In some states, the mere attendance of the principal in court to defend the action is not sufficient to discharge the bail; there must be a formal surrender of him or her by the bail into the custody of the court, while the court is in session, and the discharge of the bail is not complete until it has been entered upon the record.[14] In this regard, where the surety on the bail bond presented the defendant in court and moved the defendant to be discharged, and at the instance of the opposing party the hearing on discharge was postponed to a later date, at which time the discharge was entered but the defendant could not then be found, the security on the bail was nevertheless discharged.[15]

Under statutes in some states, a defendant may surrender him- or herself to the officer charged with his or her detention, at any time prior to forfeiture or within the time allowed by law for setting aside a judgment of forfeiture of the bail bond, and, thereafter, the surety will not be responsible for the defendant.[16] However, where the defendant appeared in court, but did not surrender himself to the officer charged with his detention, and, even if he had, the time allowed by law for the setting aside of the judgment of bond forfeiture had lapsed, the defendant was never properly surrendered for the purpose of relieving the surety of obligation on an appearance bond.[17]

Footnotes

1 Taylor v. Taintor, 83 U.S. 366, 21 L. Ed. 287, 1872 WL 15393 (1872); State v. Stanton, 59 Ariz. 55, 122 P.2d 855 (1942); Register v. Barton, 75 So. 2d 187 (Fla. 1954); State v. Spring, 180 Tenn. 506, 176 S.W.2d 817 (1944).

A bails bondsman did not request to surrender the defendant or request a warrant be issued, and therefore she did not sufficiently comply with the requirements to be released as surety. The bails bondsman argued that she was not afforded the opportunity to have the court opened in order to surrender the defendant. The evidence showed that the bails bondsman asserted in her affidavit that the defendant was in hiding from

both her and the court and did not request to surrender the defendant in open court. State v. Barnes, 2011-Ohio-799, 2011 WL 662926 (Ohio Ct. App. 6th Dist. Sandusky County 2011).

Right to arrest or surrender principal, generally, see §§ 101 to 106.

2 State v. Eller, 218 N.C. 365, 11 S.E.2d 295 (1940).

Forfeiture, generally, see §§ 127 to 140.

3 Fed. R. Crim. P. 46(g).

4 18 U.S.C.A. § 3149, referring to Fed. R. Crim. P. 46.

5 State v. Poon, 244 N.J. Super. 86, 581 A.2d 883 (App. Div. 1990).

6 State v. Costello, 489 N.W.2d 735 (Iowa 1992).

Sureties who posted $5,000 bail bond for a criminal defendant were discharged of any further duties upon an order that set aside, based on defendant's surrender to authorities, a prior forfeiture of that bond, where new bail was fixed, no court order required the $5,000 bond to remain a condition for defendant's release, and the sureties did not consent to the expansion of their obligation or contract with the state so as to assure the defendant made subsequent appearances after his surrender. State v. Marrufo-Gonzalez, 806 N.W.2d 475 (Iowa Ct. App. 2011).

7 State v. Holmes, 57 Ohio St. 3d 11, 564 N.E.2d 1066 (1991).

Release of a bail bond surety pursuant to a rule of practice, if the surety shows good cause, is not discretionary but rather requires the trial court's application of a common-law rule to the facts as found by the trial court, and appellate review of the trial court's application of the law is plenary. State v. Sheriff, 301 Conn. 617, 21 A.3d 808 (2011).

8 State v. Wilson, 202 S.W.3d 665 (Mo. Ct. App. W.D. 2006).

9 Kirby v. State, 416 So. 2d 1010 (Ala. 1982).

10 State v. Camara, 81 Haw. 324, 916 P.2d 1225 (1996).

11 People v. Caro, 753 P.2d 196 (Colo. 1988).

12 Com. v. Cabral, 443 Mass. 171, 819 N.E.2d 951 (2005).

13 People v. Bowles, 280 A.D. 476, 114 N.Y.S.2d 353 (4th Dep't 1952).

14 Wright v. Burbee, 112 Vt. 197, 22 A.2d 494 (1941).

15 Waselewski v. Barri, 146 Conn. 8, 146 A.2d 919 (1958).

16 State v. Wheeler, 508 So. 2d 1384 (La. 1987).

17 State v. Wheeler, 508 So. 2d 1384 (La. 1987).

End of Document

8A Am. Jur. 2d Bail and Recognizance VIII D Refs.

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

D. Duration of Liability, in General; Effect of Stage of Proceedings

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bail 18, 23, 71, 74, 79

A.L.R. Library

A.L.R. Index, Bail and Recognizance
West's A.L.R. Digest, Bail 18, 23, 71, 74, 79

End of Document

8A Am. Jur. 2d Bail and Recognizance § 114

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

D. Duration of Liability, in General; Effect of Stage of Proceedings

§ 114. Duration of liability on bail bond, and effect of stage of proceedings, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 18, 23, 74, 79

A.L.R. Library

Bail: duration of surety's liability on pretrial bond, 32 A.L.R.4th 504

The duration of the liability of sureties on a pretrial bond depends on the exact language used in the bond.[1] An undertaking of bail binds the parties for the appearance of the defendant until discharged by law;[2] in this regard, under the terms of some criminal bail bonds, the obligation of the surety is to produce the accused at any stage of the proceedings until the prosecution is ended and the defendant is discharged by the court or by operation of law, or custody of the defendant is transferred to proper officers of the law.[3] Furthermore, bonds have sometimes specifically stated that they are continuing bonds, including any proceeding on appeal or review,[4] which will continue in full force and effect until such time as the parties signing them are duly exonerated.[5]

The view has been expressed by the courts that a bail bond obligation binds sureties at least until after the jury's verdict,[6] and statutes have sometimes provided that an adjudication of guilt or innocence of the defendant will satisfy the conditions of the bond.[7] Also, where such a statute also provides that the original appearance bond does not guarantee an appearance during or after, among other things, a presentence investigation the court otherwise provides in the judgment, in the context of a presentence investigation, unless the trial court adjudicates a defendant guilty and provides for the presentence investigation within the judgment, the bond is not satisfied.[8] Furthermore, it has been concluded that an appearance bond is not to be satisfied when a court accepts a plea of guilty or nolo contendere, and enters a finding of guilt, but withholds adjudication and continues

the case for sentencing until the completion of a presentence investigation; rather, a judgment must be entered before the conditions of an appearance bond are satisfied under the applicable statute.[9] It has also been said, in some jurisdictions, that an original appearance bond does not apply to appearances after an adjudication of guilt or innocence, and that such a bond does not guarantee deferred sentences, appearances during or after a presentence investigation, appearances during or after appeals, or appearances after admission to a pretrial intervention program; nor does such a bond guarantee the payment of fines or attendance at educational or rehabilitative facilities.[10]

Statutes have sometimes provided that, in the absence of the written consent of the surety, a bond given for pretrial release does not continue beyond the defendant's conviction.[11] However, other statutes have allowed the continuation of a pretrial bail bond during the time a defendant is allowed to seek a writ of error, and, under such a statute, the surety on a pretrial bail bond remained liable following the trial court's pronouncement of sentence, where the trial court ordered the defendant released on the original bond pending his appeal, regardless of the fact that the surety was not notified.[12]

Bonds sometimes specifically state that they are effective throughout all stages of the proceedings until the entry of judgment in specified courts; under such language, a bond was effective until the date the court imposed sentence and recorded the judgment, despite the fact that the sentence was not made effective until a subsequent date.[13]

A surety on a bond requiring the defendant's appearance on the first day of a particular term of court, and "from term to term and time to time, thereafter," was not released from liability when the first term of court passed without the entry of judgment against the defendant, but continued to future terms.[14] A surety's liability to ensure his or her principal's appearance at a subsequent proceeding was discharged upon the issuance of mandate by the court of criminal appeals ordering the trial court to summon the principal to court to inform him or her that the conviction had been affirmed and that the principal's period of probation had commenced to run, since there could be no subsequent proceedings had relative to the charge as contemplated by state statute once probation had commenced.[15]

A bond does not automatically terminate on remand.[16] In this regard, under some state criminal rules of procedure, a bond, once approved, remains in effect throughout the appeal, including appearances on remand.[17]

Practice Tip:

Under statutory procedures in some states, within a specified number of business days after the conditions of a bond have been satisfied or the forfeiture discharged or remitted, the court must order the bond canceled and, if the surety has attached a certificate of cancellation to the original bond, must furnish an executed certificate of cancellation to the surety without cost.[18]

Footnotes

1 State v. Corl, 58 N.C. App. 107, 293 S.E.2d 264, 32 A.L.R.4th 499 (1982).

2 Sonny Livingston Bail Bonds, Inc. v. State, 460 So. 2d 1345 (Ala. Civ. App. 1984).

3 State v. Casey, 180 Neb. 888, 146 N.W.2d 370 (1966).
A state statute provided that the undertaking of bail bonds binds the parties thereto, jointly and severally, for the appearance of the defendant on the day fixed in the bond or undertaking from day-to-day of such session and from day-to-day of each session thereafter, until he or she is discharged by law and, if the trial is removed to another county, for the appearance of the defendant from day-to-day of each session of the court to which it is removed until discharged by law. Rice v. State, 488 So. 2d 1351 (Ala. 1986).

4 U.S. v. Parrett, 486 Fed. Appx. 544 (6th Cir. 2012); U.S. v. Noriega-Sarabia, 116 F.3d 417 (9th Cir. 1997).

5 U.S. v. Noriega-Sarabia, 116 F.3d 417 (9th Cir. 1997).
A bail surety was not absolved from liability where a defendant absconded after entering a guilty plea, since the surety's liability would continue indefinitely where, by statute, the surety guaranteed the appearance of defendant at all proceedings relative to the charge in question. Garcia v. State, 686 S.W.2d 281 (Tex. App. San Antonio 1985).
Exoneration, generally, see §§ 107 to 113.
Appeal bonds, generally, see § 120.

6 Livingston Bail Bonds, Inc. v. State, 450 So. 2d 129 (Ala. Civ. App. 1984).

7 Polakoff Bail Bonds v. Orange County, 634 So. 2d 1083 (Fla. 1994).
The liability of a surety under a bail bond ended under the terms of a statute when the defendant, who failed to appear for sentencing, was found to be guilty of trafficking in cocaine, and the bail bond was not a “continuing obligation” that lasted until the bond was exonerated or discharged by court, as provided by language used in the bail bond form required by the supreme court; the statutory requirements were deemed to be incorporated into the bond, and the right of the surety to be released from liability under the bond once the defendant was found guilty was a substantive right such that the statute controlled over the supreme court rule. State v. Valles, 140 N.M. 458, 2004-NMCA-118, 143 P.3d 496 (Ct. App. 2004).

8 Polakoff Bail Bonds v. Orange County, 634 So. 2d 1083 (Fla. 1994).

9 Polakoff Bail Bonds v. Orange County, 634 So. 2d 1083 (Fla. 1994).

10 Accredited Sur. & Cas. Co. v. Putnam County, 561 So. 2d 1243 (Fla. 5th DCA 1990).

11 People v. Hampton, 662 P.2d 498 (Colo. App. 1983).

12 State v. Hurley, 201 Neb. 569, 270 N.W.2d 915 (1978).

13 State v. Corl, 58 N.C. App. 107, 293 S.E.2d 264, 32 A.L.R.4th 499 (1982).

14 State v. Belcher, 168 W. Va. 515, 285 S.E.2d 147 (1981).

15 Surety Corp. of America v. State, 550 S.W.2d 689 (Tex. Crim. App. 1977).

16 Garrett v. State, 294 Ark. 556, 744 S.W.2d 731 (1988).

17 Zoller v. State, 284 Ark. 118, 680 S.W.2d 87 (1984).

18 Polakoff Bail Bonds v. Orange County, 634 So. 2d 1083 (Fla. 1994).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 115

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

D. Duration of Liability, in General; Effect of Stage of Proceedings

§ 115. Effect on liability on bail bond of failure to indict or present charges to grand jury; delay in obtaining indictment or bringing defendant to trial

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 18, 23, 74, 79

A.L.R. Library

Bail: effect on liability of bail bond surety of state's delay in obtaining indictment or bringing defendant to trial, 32 A.L.R.4th 600

The fact that no indictment is found against the principal in the bond does not discharge the surety, at least where the bond provides that the principal is not to depart the court without leave.[1] Furthermore, a surety on a bail bond will not be discharged from liability because criminal charges are not presented to or acted on by a grand jury or duly continued to a subsequent grand jury by the circuit court.[2]

The question has sometimes arisen as to the effect of a delay in seeking indictment against a defendant on a surety's liability on a bail bond; in this regard, the view has been followed that the failure of a state to seek an indictment from a grand jury session immediately following the defendant's release on bail does not discharge the sureties on the bond, based on the particular language of the bond in question, regardless of the fact that the trial court did not enter an order continuing the case to a subsequent grand jury.[3] Furthermore, delays in the commencement of a trial through the granting of continuances have not operated to relieve a surety on a bail bond from liability.[4] Similarly, delay in bringing a defendant to trial, occasioned by a defendant's participation in a pretrial diversion program, has generally not operated to release the surety from liability on a bail bond.[5]

Footnotes

1 State v. Spring, 180 Tenn. 506, 176 S.W.2d 817 (1944).

2 Livingston Bail Bonds v. State, 416 So. 2d 423, 32 A.L.R.4th 594 (Ala. 1982).

3 Livingston Bail Bonds v. State, 416 So. 2d 423, 32 A.L.R.4th 594 (Ala. 1982).

4 State v. Canania, 537 S.W.2d 203 (Mo. Ct. App. 1976).
A continuance of some charges against the defendants while other charges were being tried did not operate to discharge the surety, regardless of whether he had been notified of the continuance. State v. Moccia, 120 N.H. 298, 414 A.2d 1275 (1980).

5 Worthley v. State for Use and Benefit of Dade County, 320 So. 2d 479 (Fla. 3d DCA 1975) (holding that the acceptance of the defendant into a pretrial diversion program, resulting in a deferral of the prosecution for approximately 1½ months, did not operate to release the surety on the defendant's appearance bond from liability); State v. Rice, 137 N.J. Super. 593, 350 A.2d 95 (County Ct. 1975), order aff'd, 148 N.J. Super. 145, 372 A.2d 349 (App. Div. 1977) (holding that the delay in the disposition of a case where the trial court suspended the prosecution and ordered the defendant to enroll in a drug rehabilitation program for up to three years did not operate to release the surety in the absence of a court order to that effect or the surety's surrender of the defendant to the proper authorities).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 116

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

D. Duration of Liability, in General; Effect of Stage of Proceedings

§ 116. Effect on liability on bail bond of decision not to prosecute; dismissal or vacation of charges or indictment

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 18, 23, 74, 79

A.L.R. Library

Bail: duration of surety's liability on pretrial bond, 32 A.L.R.4th 504
Dismissal or vacation of indictment as terminating liability or obligation of surety on bail bond, 18 A.L.R.3d 1354

There is some authority for the view that both a state's announcement of "no action" and a nolle prosequi operate to terminate all pending proceedings, so as to release a surety from all obligations on a bail bond.[1] However, there is also authority to the effect that, although a state declined to prosecute three of four cases pending against a defendant-principal, the sureties had nonetheless bound themselves for the appearance of the defendant and were liable for his default, and were not released from liability merely because the cases were nol-prossed.[2]

The view has been followed that once the defendant is discharged upon a finding of lack of probable cause, the surety's obligation is terminated, and the surety's bail bond is then exonerated.[3] In this regard, state statutes have sometimes provided that the surety on appearance bonds in criminal cases will be absolved of liability upon disposition of the case, and that the term "disposition," for such purposes, includes the dismissal of the charges.[4] In a jurisdiction with such a statute, the dismissal of a charge was deemed to amount to a discharge in the due course of law as contemplated by the terminology in the bond involved, and as abolishing the charge required to invoke the relevant statutory provisions.[5] Furthermore, where an information was dismissed by a court and no order was made to hold or admit accused to bail for a reasonable time pending further proceedings, but the

dismissal was appealed, resulting in remand to the trial court and the reinstatement of the information, the dismissal was said to have the effect of a judgment of the court which, without further order, discharged the bonds.[6]

However, a surety has not always been held to be discharged from the liability for a default on a bond by a subsequent dismissal of charges even though such dismissal occurs before final judgment on a bond.[7] Also, it has been said that whether the quashing of indictments would discharge the bail should be determined by the conditions of the bond.[8]

Footnotes

1 Allied Fidelity Ins. Co. v. State for Use and Benefit of Dade County, 408 So. 2d 756 (Fla. 3d DCA 1982).

2 Kirby v. State, 416 So. 2d 1010 (Ala. 1982).

3 Apodaca Bail Bonds v. State, 720 S.W.2d 279 (Tex. App. El Paso 1986), dismissed, (Mar. 4, 1987).

4 Apodaca Bail Bonds v. State, 720 S.W.2d 279 (Tex. App. El Paso 1986), dismissed, (Mar. 4, 1987).

5 Apodaca Bail Bonds v. State, 720 S.W.2d 279 (Tex. App. El Paso 1986), dismissed, (Mar. 4, 1987).

6 Williams v. State, 489 So. 2d 811 (Fla. 1st DCA 1986).

7 State v. Overby, 90 Idaho 41, 408 P.2d 155 (1965); Fly v. State, 550 S.W.2d 684 (Tex. Crim. App. 1977).

8 State v. Mallory, 266 N.C. 31, 145 S.E.2d 335, 18 A.L.R.3d 1340 (1965).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 117

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

D. Duration of Liability, in General; Effect of Stage of Proceedings

§ 117. Effect on liability on bail bond of pretrial diversionary programs

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 18, 23, 74, 79

A surety on a bail bond is not discharged from liability when the principal enters into a pretrial diversion agreement—under which the state agrees to dismiss the case if the defendant performs certain conditions within a specified period of time—but, rather, the surety remains bound for the term of trial and subsequent proceedings relative to the charge.[1] In addition, suspension of proceedings under a pretrial diversionary program, either by applicable rule or by statute has been said not to constitute, contractually, a "final determination," operating to discharge a surety.[2] However, it has also been held that a surety has no further liability on a bond after the defendant has received deferred adjudication,[3] although there is authority to the contrary.[4] Under yet other authority, a surety is released from liability if there is a court ordered pretrial intervention program, but not where defendant enters into a pretrial diversion program based on an agreement with a state solicitor, and there is no explicit court order requiring defendant to participate in a pretrial diversion program.[5]

Footnotes

1 Fisher v. State, 832 S.W.2d 641 (Tex. App. Corpus Christi 1992).

2 State v. Rice, 137 N.J. Super. 593, 350 A.2d 95 (County Ct. 1975), order aff'd, 148 N.J. Super. 145, 372 A.2d 349 (App. Div. 1977), where the defendant was ordered to undergo supervisory drug treatment.

3 Chambers v. State, 167 S.W.3d 534 (Tex. App. Fort Worth 2005), petition for discretionary review refused, (2 pets.) (Oct. 5, 2005).

4 Harris v. State, 891 S.W.2d 730 (Tex. App. San Antonio 1994), petition for discretionary review refused, (Mar. 29, 1995).

5 AA-Professional Bail Bonding v. Deal, 332 Ga. App. 857, 775 S.E.2d 217 (2015).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 118

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

D. Duration of Liability, in General; Effect of Stage of Proceedings

§ 118. Liability on bail bond until pronouncement, imposition, or execution of sentence, and commitment, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 18, 23, 74, 79

A.L.R. Library

Bail: duration of surety's liability on pretrial bond, 32 A.L.R.4th 504

While reference has sometimes been made by the courts to a general rule that a surety of a bond is discharged by law when the defendant is sentenced,[1] the effect of the pronouncement of sentence on the liability of the surety depends almost entirely upon the terms of the bond.[2] However, where a statute required only that the defendant appear for the imposition of sentence, a surety's liability on a bond nonetheless continued until the execution of sentence, where the surety had validly consented to extend his liability beyond that required by statute.[3]

Under some states' statutes, sureties on a written undertaking are liable on the undertaking during all proceedings and for all appearances required of the defendant up to and including the surrender of the defendant in execution of any sentence imposed, irrespective of any contrary provision in the undertaking; such a provision clearly indicated an intent to extend liability beyond the imposition of sentence, and contemplated the defendant's appearing and surrendering to serve his or her sentence; however, under such a provision, all the terms of the sentence, including payments of any fine imposed, and any other terms of probation, do not have to be fulfilled before the bond is exonerated.[4]

In some instances, it has been held that under the law and the terms of the applicable bail contract, the surety remained liable until such time as the defendant surrendered to the authorities to serve his or her sentence.[5] A bond which specifically assured that the defendant would abide any judgment by surrendering to serve any sentence, by such language, clearly indicated that the bond could even continue beyond the sentencing date itself.[6]

Footnotes

1 Bailey, Banks & Birchfield, Inc. v. State, 652 So. 2d 270 (Ala. Civ. App. 1994); Liberty Bail Bonds and Legal Services, LLC v. State, 65 So. 3d 334 (Miss. Ct. App. 2011).
A surety was not entitled to vacation of a bail forfeiture and remission of the forfeiture, where a valid forfeiture existed when the trial court found that the criminal defendant's absence was without sufficient excuse and issued an order directing forfeiture, the People's filing of a forfeiture order was timely, and bail was not exonerated on the day that defendant pleaded guilty, as sentence was not pronounced that day, but rather, sentence was adjourned pursuant to a plea agreement to afford the defendant an opportunity to complete a drug treatment program, which determined a sentence to be later imposed. People v. Horn, 166 A.D.3d 537, 89 N.Y.S.3d 133 (1st Dep't 2018).

2 State v. Radcliffe, 242 Iowa 572, 44 N.W.2d 646 (1950), opinion supplemented on other grounds on reh'g, 242 Iowa 572, 47 N.W.2d 175 (1951); State v. Ericksons, 1987-NMSC-108, 106 N.M. 567, 746 P.2d 1099 (1987); In re Marshall's Estate, 416 Pa. 64, 204 A.2d 243 (1964).
A bail bond obligation cannot hold the sureties any longer responsible when sentence of law is pronounced. Livingston Bail Bonds, Inc. v. State, 450 So. 2d 129 (Ala. Civ. App. 1984).

3 Gibson v. State, 1982 OK 151, 655 P.2d 1028 (Okla. 1982).

4 Heninger v. Ninth Circuit Court, State of Utah, Washington County, 739 P.2d 1108 (Utah 1987).

5 State v. Wilson, 202 S.W.3d 665 (Mo. Ct. App. W.D. 2006) (a bond was subject to forfeiture when the defendant later failed to report to a law enforcement center for execution of sentence as ordered by the court); State v. Cotton Belt Ins. Co., 1981-NMSC-129, 97 N.M. 152, 637 P.2d 834 (1981).

6 U.S. v. Noriega-Sarabia, 116 F.3d 417 (9th Cir. 1997).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 119

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

D. Duration of Liability, in General; Effect of Stage of Proceedings

§ 119. Liability on bail bond until “disposition,” “determination,” “final disposition,” “final order,” or similar terms

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 18, 23, 74, 79

A.L.R. Library

Bail: duration of surety's liability on pretrial bond, 32 A.L.R.4th 504

Under the law of some states, once a bond has been executed and the person released from custody thereon, the bond continues in effect until final disposition of the case in the trial court.[1] Furthermore, under rules in some states, a bond is valid until full and final disposition of the case, unless the bond has been revoked.[2] Court rules have also sometimes provided that bonds remain in effect from the date of issue until “disposition” by a specified court, and under such a rule, the term “disposition” has been construed to refer to the ultimate disposition of the case, including any proceedings pending appeal and thereafter, so that a surety on a bond would not be released from liability upon the conviction and sentencing of the defendant.[3] Furthermore, state statutes have sometimes provided that the surety on appearance bonds in criminal cases will be absolved of liability upon disposition of the case, and that the term “disposition,” for such purposes, means dismissal, acquittal, or a finding of guilty on the charges made the basis of the bond.[4] Disposition may also include sentencing.[5]

A surety is generally discharged from responsibility on the bond when the principal's case is finally determined[6] and the “final determination” of the matter, in the context of a bail bond to secure the defendant's appearance, is the judgment of conviction entered at the time of sentencing.[7] When the surety has only undertaken to have his or her principal in court until the case is

determined, sentencing discharges the surety.[8] Also, under a statute requiring bail bonds executed before sentencing to contain the condition that the defendant appear in court as ordered until discharged on “final order of the court,” the “final order of the court” has been construed to be the point in time at which the surety was discharged from liability by operation of law, that is, at the court's sentence.[9]

A bail bond form which required a surety to pay a certain sum to the court unless the defendant appeared in court at any designated time “until the final trial, conviction and executed sentence, or acquittal” of defendant, was ambiguous, and, would be construed against the state, so that the bail undertaking ended at the time sentence was pronounced.[10]

Footnotes

1 Moreno v. People, 775 P.2d 1184 (Colo. 1989).

2 Com. v. Chopak, 532 Pa. 227, 615 A.2d 696 (1992).

3 State v. Moccia, 120 N.H. 298, 414 A.2d 1275 (1980).

4 Apodaca Bail Bonds v. State, 720 S.W.2d 279 (Tex. App. El Paso 1986), dismissed, (Mar. 4, 1987).

5 State v. Davis, 173 S.W.3d 411 (Tenn. 2005) (the obligation did not extend to the payment of the fine and costs which the defendant, having become a fugitive after the two-day incarceration ended, had failed to pay). Liability until sentencing, generally, see § 118.

6 In re Forfeiture of Bail Bond, 276 Mich. App. 482, 740 N.W.2d 734 (2007) (overruled on other grounds by, In re Forfeiture of Bail Bond, 496 Mich. 320, 852 N.W.2d 747 (2014)).

7 State v. Calcano, 397 N.J. Super. 302, 937 A.2d 314 (App. Div. 2007).

8 State v. Radcliffe, 242 Iowa 572, 44 N.W.2d 646 (1950), opinion supplemented on other grounds on reh'g, 242 Iowa 572, 47 N.W.2d 175 (1951); State v. Ericksons, 1987-NMSC-108, 106 N.M. 567, 746 P.2d 1099 (1987); In re Marshall's Estate, 416 Pa. 64, 204 A.2d 243 (1964).

9 State v. Braun, 100 Wis. 2d 77, 301 N.W.2d 180 (1981).

10 State v. Bell, 565 So. 2d 1087 (La. Ct. App. 4th Cir. 1990), writ denied, 571 So. 2d 626 (La. 1990).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 120

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

VIII. Rights and Liabilities of Sureties or Depositors of Bail Money, in General

D. Duration of Liability, in General; Effect of Stage of Proceedings

§ 120. Duration of liability on appeal bonds

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 18, 23, 71, 74, 79

A.L.R. Library

Bail: duration of surety's liability on posttrial bail bond, 32 A.L.R.4th 575

Appeal bonds have sometimes required a defendant to appear personally at the hearing on his or her motion for a new trial on a specified date, as well as to "stand to and abide the final order, judgment, and sentence of the court" and under such a bond, the surety's liability is not terminated when the defendant appears at the initial date for such hearing.[1]

Where, under the terms of a defendant's appeal bond, he agreed to surrender in execution of the judgment and direction of the state supreme court, and the state appeal bond statute required such bond to secure a defendant's in all respects abiding the orders and judgment of the appellate court, an appeal bond would stand as security for the defendant's appearance at a retrial ordered by the appellate court.[2]

Where, even though the defendant was in the presence of the court after an appeal, in a hearing for the revocation of probation, the actual execution of his judgment was not set until a later date, at which time the defendant did not appear, the terms of the appeal bonds were not fulfilled, and the bond company remained liable under such bonds.[3]

Footnotes

1 State v. Slaughter, 246 Ga. 174, 269 S.E.2d 446, 32 A.L.R.4th 570 (1980).

2 State v. Roghair, 390 N.W.2d 123 (Iowa 1986).

3 State v. Rojas-Cardona, 503 N.W.2d 591 (Iowa 1993) (overruled on other grounds by, State v. Hogrefe, 557 N.W.2d 871 (Iowa 1996)).

End of Document

8A Am. Jur. 2d Bail and Recognizance IX A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bail 25.1, 26, 81.1, 82

A.L.R. Library

A.L.R. Index, Bail and Recognizance
West's A.L.R. Digest, Bail 25.1, 26, 81.1, 82

End of Document

8A Am. Jur. 2d Bail and Recognizance § 121

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

A. In General

§ 121. Sanctions for violation of bail conditions, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 25.1, 26, 81.1, 82

Statutes in some states enumerate possible sanctions for the violation of a condition of release or the commission of a crime while on release, ranging from the imposition of different or additional conditions of release to the revocation of release where the defendant is on release with respect to an offense with a possible term of imprisonment of 10 or more years; furthermore, state court rules have sometimes provided that after a hearing and upon a finding that the defendant has violated reasonable conditions imposed on his or her release, the judicial authority may impose different or additional conditions upon the defendant's release or may revoke his or her release.[1] Violation of bail bond conditions is a charge independent of the underlying events that led to the imposition of bail bond conditions, and a defendant who violates the conditions of his bail bond is charged separately for doing so under a distinct legislative scheme.[2] In order to prove that a defendant violated a statute regarding the crime of violation of bail bond conditions, the prosecution must prove beyond a reasonable doubt that the terms of the bond were in effect at the time of the alleged illegal conduct.[3]

Footnotes

1 State v. Ayala, 222 Conn. 331, 610 A.2d 1162 (1992).

2 People v. Fransua, 2016 COA 79, 2016 WL 2962209 (Colo. App. 2016).

3 People v. Luna, 2013 COA 67, 410 P.3d 475 (Colo. App. 2013).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 122

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

A. In General

§ 122. Issuance of bench warrant for failure of defendant under bond to appear

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 25.1, 26, 81.1, 82

If a defendant under bond fails to appear as required, the court must, under some state laws, order the issuance of a warrant for the defendant's arrest.[1]

Footnotes

1 State v. Nugent, 199 Conn. 537, 508 A.2d 728 (1986) (issuance of a rearrest warrant or a mittimus directing a proper officer to take the principal into custody); Wiegand v. State, 112 Md. App. 516, 685 A.2d 880 (1996) (under state rule).

End of Document

8A Am. Jur. 2d Bail and Recognizance IX B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

B. Revocation of Bail; Detention

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bail 73.1(1), 73.1(2)

A.L.R. Library

A.L.R. Index, Bail and Recognizance
A.L.R. Index, Federal Bail Reform Act
West's A.L.R. Digest, Bail 73.1(1), 73.1(2)

8A Am. Jur. 2d Bail and Recognizance § 123

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

B. Revocation of Bail; Detention

§ 123. Revocation of bail, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 73.1(1)

A.L.R. Library

Pretrial preventive detention by state court, 75 A.L.R.3d 956

A court has the inherent power to revoke bail to protect its processes and the community.[1] However, once a court grants bail, it cannot revoke the decision if circumstances have not changed or additional evidence has not emerged since the bond was originally set.[2] Revocation of pretrial bail will be appropriate in cases where the court finds that the imposition of additional bail conditions or an increased amount of bail would not be sufficient to assure the defendant's appearance at trial or protect the public's safety.[3] The fundamental right to bail guaranteed under a state constitution must be qualified by a court's authority to ensure compliance with the conditions of release.[4]

The breach of a condition of release provides an adequate basis to revoke the release.[5] While a defendant who violates a condition of his pretrial release forfeits his right to continued release under the original bond, he does not forfeit altogether his constitutional right to pretrial release.[6] A specific statute granting the trial court authority to revoke bail upon the violation of a reasonable condition of release is not necessary, since a court with jurisdiction over a criminal case has the power to enforce its orders as to bail just as it has control over other orders.[7]

In some jurisdictions, a court may revoke the right to bail altogether, if it determines that no conditions of release will assure the defendant's appearance at trial, or if it finds that the defendant has violated certain conditions of release, among them the intimidation or harassment of a victim or potential witness.[8] Thus, in such jurisdictions, the court may not revoke conditions of release and bail unless the court finds that (1) the defendant violated the conditions of release, and (2) the violations constituted a threat to the integrity of the judicial system.[9] In this regard, under some state statutes, the right to bail may be revoked entirely if a court finds that a defendant has (1) intimidated or harassed a victim, potential witness, juror or judicial officer in violation of a condition of release;[10] (2) repeatedly violated conditions of release;[11] (3) attempted to conceal or destroy evidence relating to the pending criminal proceeding;[12] (4) without just cause failed to appear at a specified time and place ordered by a judicial officer;[13] (5) in violation of a condition of release, been charged with a felony or a crime against a person or an offense like the underlying charge;[14] or (6) has engaged in conduct resulting in the obstruction of the orderly and expeditious progress of the trial or other proceedings.[15]

A judge has the inherent power to revoke bail summarily, thereby placing a defendant in custody without a full-blown evidentiary hearing involving the confrontation of witnesses,[16] although due process may require that a hearing be held within a reasonable time.[17] Indeed, some statutes require an evidentiary hearing before bail is revoked.[18] In some jurisdictions, prior to revocation of pretrial bail, the defendant is entitled to the following: (1) written notice of the alleged grounds for revocation and the date, place, and time of the hearing; (2) disclosure of the evidence against him or her; (3) the meaningful opportunity to be heard and to present evidence; (4) the right to confront and cross-examine witnesses; and (5) the right to make arguments in his or her defense.[19] The due process required to revoke a defendant's pretrial bond during a trial is satisfied when the defense counsel is given opportunity to be heard and in fact argues against the state's motion to revoke the bond.[20]

The revocation of bail simply denies an individual defendant the opportunity to remain outside of custody pending the outcome of his or her judicial process.[21]

Definition:

The term “revoke” in the context of a statute authorizing the revocation of a defendant's release under certain circumstances means to annul or make void by recalling or taking back, to cancel, rescind, repeal, or reverse, and, absent language indicating that the legislature intended a new release to be granted in all cases, the use of the term “revoke” denotes finality; read literally, therefore, such a statutory provision authorizes the permanent revocation of release.[22]

A statutory right to bail may prevent the revocation of bail in some circumstances.[23]

Observation:

Although a state rule providing for the revocation of release on bail where the court has reasonable cause to believe that a defendant has committed a felony while released pending adjudication of a prior charge, which rule does not preclude setting new and reasonable bail with appropriate restrictions, has been held to be constitutional, the revocation of release and denial of bail was unconstitutionally applied to deny all bail to the defendant.[24]

A bail bond did not authorize a trial court to detain a defendant, who was released on bond, for failing a sua sponte drug test, where the defendant had not violated a court order, nor appeared to be impaired at his arraignment.[25]

CUMULATIVE SUPPLEMENT

Cases:

Statute, providing that person who has been released after a hearing and who has violated a condition of his release shall be subject to a revocation of release and an order of detention, governs violations of pretrial conditions of release. Mass. Gen. Laws Ann. ch. 276, § 58B. Commonwealth v. Preston P., 136 N.E.3d 1179 (Mass. 2020).

[END OF SUPPLEMENT]

Footnotes

1 U.S. v. Graewe, 689 F.2d 54 (6th Cir. 1982); Parker v. State, 277 Ga. App. 155, 626 S.E.2d 152 (2006) (when such action is appropriate to the orderly progress of the trial and the fair administration of justice); Commonwealth v. Brown, 479 Mass. 163, 92 N.E.3d 1189 (2018); State v. Dodson, 556 S.W.2d 938 (Mo. Ct. App. 1977).

2 Soto v. State, 89 So. 3d 263 (Fla. 3d DCA 2012).

3 State v. Burgins, 464 S.W.3d 298 (Tenn. 2015).

4 State v. Ayala, 222 Conn. 331, 610 A.2d 1162 (1992).

5 Morreno v. Brickner, 243 Ariz. 543, 416 P.3d 807 (2018); Prokopishen v. State, 82 So. 3d 1046 (Fla. 4th DCA 2011); State v. Brown, 2014-NMSC-038, 338 P.3d 1276 (N.M. 2014); State v. Holmes, 57 Ohio St. 3d 11, 564 N.E.2d 1066 (1991); State v. Burgins, 464 S.W.3d 298 (Tenn. 2015).

6 Ginsberg v. Ryan, 60 So. 3d 475 (Fla. 3d DCA 2011).

7 Mello v. Superior Court, 117 R.I. 578, 370 A.2d 1262 (1977).

8 State v. Stimpson, 205 Vt. 642, 2017 VT 97, 178 A.3d 1018 (2017).
A trial court did not abuse its discretion in revoking a murder defendant's bond during trial, where the defendant was placed on house arrest as a condition of his bond, a local hotel served as his "house" during the trial, and the defendant unplugged his monitoring device and left the city without obtaining the trial court's permission, thereby violating a condition of his bond that he remain under house arrest. State v. Clinkscale, 177 Ohio App. 3d 294, 2008-Ohio-1677, 894 N.E.2d 700 (10th Dist. Franklin County 2008), judgment rev'd on other grounds, 122 Ohio St. 3d 351, 2009-Ohio-2746, 911 N.E.2d 862 (2009).

9 State v. Stimpson, 205 Vt. 642, 2017 VT 97, 178 A.3d 1018 (2017).

10 Ray v. State, 679 N.E.2d 1364 (Ind. Ct. App. 1997); Ex Parte Shires, 508 S.W.3d 856 (Tex. App. Fort Worth 2016); State v. Sauve, 159 Vt. 566, 621 A.2d 1296 (1993).

Actions of defendant upon release from arrest for domestic violence arrest, in which defendant threatened alleged victim and rapidly "pursued" alleged victim with his truck, constituted a significant threat to the integrity of judicial proceedings sufficient to revoke defendant's conditions of release and bail; record showed that alleged victim was afraid of defendant, and defendant's actions severely endangered the alleged victim and potential witness. State v. Stimpson, 205 Vt. 642, 2017 VT 97, 178 A.3d 1018 (2017).

11 Ray v. State, 679 N.E.2d 1364 (Ind. Ct. App. 1997); State v. Sauve, 159 Vt. 566, 621 A.2d 1296 (1993).

12 Ray v. State, 679 N.E.2d 1364 (Ind. Ct. App. 1997).

13 Ray v. State, 679 N.E.2d 1364 (Ind. Ct. App. 1997); State v. Brown, 2014-NMSC-038, 338 P.3d 1276 (N.M. 2014); State v. Sauve, 159 Vt. 566, 621 A.2d 1296 (1993).

A defendant's late arrival to a scheduled proceeding could constitute a failure to appear at the required time in breach of his bond, for which a trial court would be empowered to revoke the defendant's pretrial release. Hutchinson v. State, 133 So. 3d 552 (Fla. 2d DCA 2014).

14 Santiago v. Ryan, 109 So. 3d 848 (Fla. 3d DCA 2013); Ray v. State, 679 N.E.2d 1364 (Ind. Ct. App. 1997); Com. v. Morales, 473 Mass. 1019, 44 N.E.3d 843 (2016); State v. Brown, 2014-NMSC-038, 338 P.3d 1276 (N.M. 2014); State v. Burgins, 464 S.W.3d 298 (Tenn. 2015); State v. Sauve, 159 Vt. 566, 621 A.2d 1296 (1993).

15 State v. Burgins, 464 S.W.3d 298 (Tenn. 2015).

16 Simeus v. Rambosk, 100 So. 3d 2 (Fla. 2d DCA 2011); Com. v. Wilcox, 446 Mass. 61, 841 N.E.2d 1240 (2006).

17 Traylor v. State, 817 N.E.2d 611 (Ind. Ct. App. 2004).

18 Josh J. v. Commonwealth, 478 Mass. 716, 89 N.E.3d 1123 (2018); State v. Burgins, 464 S.W.3d 298 (Tenn. 2015).

19 State v. Burgins, 464 S.W.3d 298 (Tenn. 2015).

20 Parker v. State, 277 Ga. App. 155, 626 S.E.2d 152 (2006).

21 Com. v. Chopak, 532 Pa. 227, 615 A.2d 696 (1992).

22 State v. Ayala, 222 Conn. 331, 610 A.2d 1162 (1992).

23 Ex parte Ziglar, 604 So. 2d 384 (Ala. 1992), holding that the trial court erred in denying the petition of an appellant convicted of manslaughter to rescind an order revoking appellate bail and remanding the appellant into custody, where, under former law applicable at the time the appellant was released on appellate bail, he had a statutory right to appellate bail, and since a change in the law could not be applied ex post facto.

24 Reeves v. State, 261 Ark. 384, 548 S.W.2d 822 (1977), indicating that the trial court should merely have set new and reasonable bail with whatever terms and restrictions it deemed appropriate.

25 Reyes v. McCray, 879 So. 2d 1269 (Fla. 3d DCA 2004).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 124

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

B. Revocation of Bail; Detention

§ 124. Revocation of bail by federal courts; breach of conditions of bail

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 73.1(1)

A.L.R. Library

Construction and application of provisions of Federal Bail Reform Act of 1966 (18 U.S.C.A. secs. 3146, 3147) governing pretrial release or bail of persons charged with noncapital offense, 8 A.L.R. Fed. 586

A person who has been released under the applicable federal bail provision, and who has violated a condition of his or her release, is subject to, inter alia, a revocation of release and an order of detention.[1] After a person who has been released on an appearance bond, is arrested by his or her surety, delivered to a United States marshal and brought before a judicial officer, the judicial officer must determine in accordance with the provisions of the applicable statute whether to revoke the release of the person.[2] The judicial officer must enter an order of revocation and detention if, after a hearing, the judicial officer finds that there is probable cause to believe that the person has committed a federal, state, or local crime while on release;[3] or clear and convincing evidence that the person has violated any other condition of release;[4] and finds that based on the factors set forth by statute, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community;[5] or the person is unlikely to abide by any condition or combination of conditions of release.[6] In order to satisfy the probable-cause requirement of the applicable statute—that is the finding that there is probable cause to believe that the person has committed a federal, state, or local crime while on release—the facts available to the judicial officer must warrant a person of reasonable caution in the belief that the defendant has committed a crime while on bail.[7]

If the judicial officer finds that there are conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community, and that the person will abide by such conditions, the judicial officer must treat the person in accordance with the provisions of the statute pertaining to release or detention of a defendant pending trial and may amend the conditions of release accordingly.[8]

A law enforcement officer, who is authorized to arrest for an offense committed in his or her presence, may arrest a person who is released if the officer has reasonable grounds to believe that the person is violating, in his or her presence, a condition imposed on the person pursuant to law, or, if the violation involves a failure to remain in a specified institution as required, a condition imposed pursuant to another law.[9]

Revocation of a defendant's bond does not automatically terminate the surety's liability.[10]

Footnotes

1 18 U.S.C.A. § 3148(a), referring to 18 U.S.C.A. § 3142.

2 18 U.S.C.A. § 3149, referring to 18 U.S.C.A. § 3148(b).

3 18 U.S.C.A. § 3148(b)(1)(A).
There was probable cause to believe that defendant, who was charged with threatening the life of the President of the United States, committed a federal, state, or local crime while on pretrial release, as required to revoke his release, where defendant did not comply with his medication requirements, he left residential facility for mentally ill individuals and failed to return by the 9:00 p.m. curfew, he used cocaine while associating with a prostitute, and he went missing for almost 36 hours until discovered by police. U.S. v. Parker, 65 F. Supp. 3d 358 (W.D. N.Y. 2014).

4 18 U.S.C.A. § 3148(b)(1)(B).
The government proved by clear and convincing evidence that a defendant had violated the conditions of his bail release, as required to support the revocation of the defendant's release, where the defendant admitted violating the conditions of his release, including a requirement that he report on a regular basis to pretrial services, refrain from the use or unlawful possession of a narcotic drug or other controlled substance, and be subject to random drug testing, evaluation, and treatment. U.S. v. Poinsett, 953 F. Supp. 37 (N.D. N.Y. 1997).

5 18 U.S.C.A. § 3148(b)(2)(A), referring to 18 U.S.C.A. § 3142(g).
The evidence as a whole supported district court's decision to revoke pretrial release and order defendant's detention pending trial for conspiring to distribute and possess with intent to distribute methamphetamine; although defendant had record of showing up for court, he was on pretrial release for about a month, during which he tested positive for drugs and was arrested for drug-related crimes, there was probable cause that he committed a felony while on release, he had four drug convictions, no ties to the district, and no verifiable legitimate employment, creating a rebuttable presumption that he was a danger to the community. United States v. Moreno, 857 F.3d 723 (5th Cir. 2017).

6 18 U.S.C.A. § 3148(b)(2)(B).

7 U.S. v. Gotti, 794 F.2d 773 (2d Cir. 1986); U.S. v. Aron, 904 F.2d 221 (5th Cir. 1990); U.S. v. Cook, 880 F.2d 1158 (10th Cir. 1989); U.S. v. Wilson, 820 F. Supp. 1031 (N.D. Tex. 1993), aff'd, 996 F.2d 308 (5th Cir. 1993).
Revocation of a defendant's pretrial release was warranted, in light of evidence that the defendant, while on pretrial release, had collected and was actively attempting to collect tens of thousands of dollars owed to him by a drug buyer, and that the defendant was both a flight risk and a danger to the community and that no conditions of release could ensure both his appearance and the community's safety. U.S. v. Aldrich, 114 Fed. Appx. 19 (2d Cir. 2004).

8 18 U.S.C.A. § 3148(b), referring to 18 U.S.C.A. § 3142.

9 18 U.S.C.A. § 3062, referring 18 U.S.C.A. § 3142(c)(1)(B)(iv), (v), (viii), (ix), (x), (xiii).

10 U.S. v. Torres, 807 F.3d 257 (7th Cir. 2015) (sureties liable under bond when defendant fled before taken into custody after bond revoked).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 125

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

B. Revocation of Bail; Detention

§ 125. Revocation of bail by federal courts; breach of conditions of bail—Procedure

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 73.1(1)

Under federal law, the attorney for the Government may initiate a proceeding for revocation of an order of release by filing a motion with the district court.[1] A judicial officer may issue a warrant for the arrest of a person charged with violating a condition of release, and the person must be brought before a judicial officer in the district in which such person's arrest was ordered for a proceeding in accordance with law.[2] To the extent practicable, a person charged with violating the condition of release that such person not commit a federal, state, or local crime during the period of release, must be brought before the judicial officer who ordered the release and whose order is alleged to have been violated.[3]

Under federal law, if the government moves for revocation of bail following a conviction and prior to sentencing, its motion will permit a response from the defendants, and a record can be made, but if the trial court intends to act sua sponte it must give appropriate notice of that intention, giving reasons and affording an opportunity for defendants to meet the burden imposed by the applicable federal rule.[4]

Practice Tip:

While a district court has wide discretion in evaluating the type of bail revocation proceeding to hold and in evaluating the accuracy of the evidence presented by the Government, the district court should include a clear record of its findings and its reasons for revocation and detention, which may be embodied in a transcript of the proceedings.[5]

Footnotes

1 18 U.S.C.A. § 3148(b).

2 18 U.S.C.A. § 3148(b).

3 18 U.S.C.A. § 3148(b).

4 U.S. v. Higgs, 731 F.2d 167 (3d Cir. 1984), referring to the burden imposed by Fed. R. Crim. P. 46(c).

5 United States v. Brooks, 872 F.3d 78 (2d Cir. 2017), cert. denied, 139 S. Ct. 171, 202 L. Ed. 2d 37 (2018).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 126

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

B. Revocation of Bail; Detention

§ 126. Evidence, proof, and presumptions in revocation of bail; burdens of production and persuasion

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 73.1(2)

Bail may be prohibited by statute for capital or other specified offenses, and, in some jurisdictions, at a bail hearing, a trial court may not revoke bail unless the facts adduced by the state furnish a reasonable basis for a jury finding of a verdict of guilty of a capital crime.[1] State statutes have sometimes provided that revocation must be shown by probable cause,[2] or by clear and convincing evidence that the safety of any other person is endangered while the defendant is on release.[3] In some jurisdictions, findings that bail conditions have been violated must be made by a preponderance of the evidence.[4]

Some state statutes authorize the revocation of bail upon a showing of good cause.[5]

The state has the burden of proving that there is a change in circumstances or new information that warrants the revocation of the bond.[6]

A trial court may revoke pretrial release in one case based on a probable-cause affidavit for a subsequently committed offense that was prepared for an arrest warrant or a probable-cause determination at first appearance; such an affidavit may contain hearsay statements made to a police officer by eyewitnesses who observed the alleged crime and identified the defendant.[7] Hearsay evidence may be admitted at a bail revocation hearing when the trial court finds that it is reliable.[8]

Under federal law, if there is probable cause to believe that, while on release, the person committed a federal, state, or local felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of any other person or the community.[9] Probable cause requires only that the facts available to the judicial officer warrant a person of reasonable caution in the belief that the defendant has committed a crime while on bail.[10] In analyzing

a motion by the government to revoke pretrial release and order detention, once the rebuttable presumption that no conditions will assure that defendant will not pose a danger to the safety of the community is triggered by a finding of probable cause, the defendant must produce only some evidence to rebut the presumption; nevertheless, production of such evidence does not cause the presumption to disappear, but rather, the burden of persuasion remains on the government and the rebutted presumption retains evidentiary weight.[11] When considering a motion to revoke a release order, the government's burden is preponderance of the evidence for both risk of flight and dangerousness.[12]

Observation:

Temporary detention to permit the revocation of a conditional release pursuant to the applicable federal statute, requires both proof of the defendant's status and that the defendant might flee or is dangerous.[13]

Where the state introduces no evidence and fails to establish any grounds for revoking bail, a trial court's order revoking bail is improper.[14] Also, under some states' statutes, evidence that a defendant had a prior conviction for stalking the same victim was insufficient as a matter of law to support the court's revocation of bail.[15]

Footnotes

1 State v. Kastanis, 848 P.2d 673 (Utah 1993).
Right to hearing, generally, see § 123.

2 Baehren v. State, 965 So. 2d 297 (Fla. 4th DCA 2007) (a trial court did not have sufficient evidence of probable cause to believe a petitioner had committed a new offense while on bond, as required to revoke the bond, where the victims testified that although they had been under the mistaken impression that the petitioner had misused their credit card while on pretrial release, they later determined that he had not misused their identity, and the State did not challenge the new testimony); Josh J. v. Commonwealth, 478 Mass. 716, 89 N.E.3d 1123 (2018); State v. White, 452 N.J. Super. 417, 175 A.3d 178 (App. Div. 2017) (applies to revocation hearings based on commission of new offense).
Determination of probable cause to believe a defendant committed a new crime while on pretrial release, such that a trial court may on its own motion revoke pretrial release and order pretrial detention, is similar to the probable-cause determination necessary to support an arrest warrant or to the probable-cause determination made at first appearance; it must be based on an affidavit of a police officer, a sworn complaint, sworn deposition testimony, or other testimony under oath properly recorded. Simeus v. Rambosk, 100 So. 3d 2 (Fla. 2d DCA 2011).

3 State v. Ayala, 222 Conn. 331, 610 A.2d 1162 (1992); Ray v. State, 679 N.E.2d 1364 (Ind. Ct. App. 1997); In re Judge Sassone, 959 So. 2d 859 (La. 2007).

4 State v. White, 452 N.J. Super. 417, 175 A.3d 178 (App. Div. 2017); State v. Burgins, 464 S.W.3d 298 (Tenn. 2015); Ex Parte Shires, 508 S.W.3d 856 (Tex. App. Fort Worth 2016); State v. Sauve, 159 Vt. 566, 621 A.2d 1296 (1993).

5 Ray v. State, 679 N.E.2d 1364 (Ind. Ct. App. 1997).

6 Hill v. State, 152 So. 3d 56 (Fla. 5th DCA 2014).

7 Simeus v. Rambosk, 100 So. 3d 2 (Fla. 2d DCA 2011).

8 State v. Burgins, 464 S.W.3d 298 (Tenn. 2015).

9 18 U.S.C.A. § 3148(b).

Finding of probable cause that defendant perjured himself by failing to disclose certain assets in his Criminal Justice Act affidavit triggered rebuttable presumption of dangerousness under statute governing revocation of bail pending trial; statute plainly stated that presumption was triggered by probable-cause finding as to defendant's commission of any felony, regardless of whether felony itself involved violence, threats, or other indicia of dangerousness, and defendant's conduct also posed serious threat to court's processes. U.S. v. Bartok, 472 Fed. Appx. 25 (2d Cir. 2012).

10 U.S. v. Gilley, 771 F. Supp. 2d 1301 (M.D. Ala. 2011).

11 U.S. v. Gennaco, 834 F. Supp. 2d 38 (D. Mass. 2011).

12 U.S. v. Parker, 65 F. Supp. 3d 358 (W.D. N.Y. 2014).

13 U.S. v. Janze, 124 F.R.D. 86 (M.D. Pa. 1989), referring to 18 U.S.C.A. § 3142 and holding that proof that the defendant might flee was satisfied where it was shown that the defendant, who was arrested in Pennsylvania while on a pretrial release from West Virginia, violated his bail conditions, expressed a desire to hide, and attempted to evade capture, and that the West Virginia magistrate intended that the defendant be detained.

14 Phillips v. State, 550 N.E.2d 1290 (Ind. 1990) (abrogated on other grounds by, Fry v. State, 990 N.E.2d 429 (Ind. 2013)).

15 Phillips v. State, 550 N.E.2d 1290 (Ind. 1990) (abrogated on other grounds by, Fry v. State, 990 N.E.2d 429 (Ind. 2013)).

End of Document

8A Am. Jur. 2d Bail and Recognizance IX C Refs.

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bail 23, 24, 27 to 37, 75.1 to 75.3, 79(1) to 80, 83 to 95

A.L.R. Library

A.L.R. Index, Bail and Recognizance
A.L.R. Index, Federal Bail Reform Act
West's A.L.R. Digest, Bail 23, 24, 27 to 37, 75.1 to 75.3, 79(1) to 80, 83 to 95

End of Document

8A Am. Jur. 2d Bail and Recognizance § 127

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

1. Forfeiture

a. In General

§ 127. Forfeiture of bail, generally; nature of proceedings

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 27, 28, 75.1, 75.3, 83, 84

Bail forfeiture is a process whereby an individual defendant surrenders part or all of his bond and is appropriate when he breaches a condition of his bail.[1]

While some states consider proceedings for the forfeiture of bail to be criminal proceedings,[2] generally speaking, a bond forfeiture is a civil proceeding or action.[3] An action for forfeiture is, in essence, an action to enforce the surety's contract with the state, executed by the former when the recognizance was entered into; thus, principles of law relating to contracts apply.[4] The purpose of a bond forfeiture statute is to shield the surety from prejudice brought about by the delay in learning of the defendant's failure to appear.[5] The forfeiture of a bail bond functions as damages for breach of the civil contract, not as a punishment for the commission of a criminal offense.[6]

Observation:

The sanction of a forfeiture is required not only to vindicate the public interest, but to assure that sureties, whether professional or family and friends, will be vigilant at all times to assure the appearance of defendants if and when required.[7]

In some jurisdictions, by statute, bond forfeiture is a discretionary decision for the trial court,[8] and, by rule in some states, the issuing authority or court has the authority to declare a bond forfeited when a breach of bail conditions occurs.[9] Forfeiture of bail is not a punitive tool, but is used to assure the defendant's appearance.[10]

By statute in some jurisdictions, once the trial court determines that a condition of a bond had been violated, the court is required to declare the bond forfeited.[11] State rules have also sometimes specifically provided that if there is a breach of condition of a bond, the court must declare a forfeiture of the bail.[12] Some states' rules of criminal procedure have required that the violation of a condition of an appearance bond will be forfeited unless the violation is explained or excused.[13]

Due to the high importance of preserving freedom for individuals not yet convicted of a crime, in deciding whether to forfeit bail there is a balance between adopting policies that encourage bondspersons to enter bail contracts while still holding those persons accountable for their obligation to secure a defendant's appearance; for this reason, the propriety of forfeiture of bail depends on the particular facts of each case.[14] Courts, when faced with a bond forfeiture request, should look to the following factors, as well as other factors as justice dictates on a case-by-case basis, understanding that the parameters of each will be applied differently to each individual forfeiture proceeding—

— whether the applicant is a commercial bondsman.[15]

— the extent of the bondsman's supervision of the defendant.[16]

— the bondsperson's participation in locating the defendant.[17]

— whether the defendant's breach of the recognizance of bail conditions was willful.[18]

— any explanation or mitigating factors presented by the defendant.[19]

— the public's interest in the defendant's appearance.[20]

— the deterrence value of forfeiture.[21]

— the seriousness of the condition violated.[22]

— whether forfeiture will vindicate the injury to the public interest suffered as a result of the breach.[23]

— the appropriateness of the amount of the recognizance of bail.[24]

— the purpose of the bond.[25]

— whether the defendant's failure to appear due to incarceration arose from a crime committed before or after being released on bond.[26]

— the cost, inconvenience, prejudice or potential prejudice suffered by the state as a result of the breach.[27]

— any intangible costs.[28]

— any other mitigating or aggravating factors.[29]

Under the applicable federal rule, a court must declare the bail forfeited if a condition of the bond is breached.[30] Forfeiture under the federal rule is limited to a violation of a condition of bond.[31] Sureties for a bail bond need not be involved in the violation of the terms of the bond, in order for the sureties to forfeit their security for the bond, and all that is required is that the defendant violate one of the terms.[32] Where there is a breach of conditions of the bond, the court has a duty to declare a forfeiture and there is no duty on the part of the state to prove damages.[33]

The issuing of a preliminary order requiring bail "revocation" does not preclude a trial court from subsequently issuing an order of partial forfeiture.[34]

Where the government wins judgment against a defendant on bond forfeiture, the doctrine of res judicata does not bar the government from proceeding against the surety on the bond.[35]

Practice Tip:

In a state where, when a cash bail bond is forfeited, the clerk is required to transfer the money to a state school fund, the state treasurer, being the keeper of the fund, is, thus, a necessary and indispensable party in an action involving the determination of a third party's claim to the posted cash bond.[36]

Footnotes

1 Com. v. Hernandez, 2005 PA Super 336, 886 A.2d 231 (2005).

2 State v. Shelton, 227 La. 27, 78 So. 2d 498 (1955).
The civil rules apply procedurally, but not substantively, to a bail bond forfeiture action. In re State ex rel. Rodriguez, 166 S.W.3d 894 (Tex. App. El Paso 2005).

3 U.S. v. Vaccaro, 51 F.3d 189, 32 Fed. R. Serv. 3d 588 (9th Cir. 1995); State v. Letscher, 888 N.W.2d 880 (Iowa 2016); Safety Nat. Cas. Corp. v. State, 986 So. 2d 802 (La. Ct. App. 2d Cir. 2008), writ denied, 5 So. 3d 140 (La. 2009); State v. Wilson, 202 S.W.3d 665 (Mo. Ct. App. W.D. 2006).

4 State v. Wilson, 202 S.W.3d 665 (Mo. Ct. App. W.D. 2006).

5 State v. Mosk, 257 So. 3d 206 (La. Ct. App. 4th Cir. 2018).

6 United States v. Brooks, 872 F.3d 78 (2d Cir. 2017), cert. denied, 139 S. Ct. 171, 202 L. Ed. 2d 37 (2018).

7 U.S. v. Burnett, 474 F. Supp. 761 (S.D. N.Y. 1979); State v. Werner, 667 A.2d 770 (R.I. 1995).

8 State v. Fry, 128 Idaho 50, 910 P.2d 164 (Ct. App. 1994); State v. Pacheco, 143 N.M. 851, 2008-NMCA-055, 182 P.3d 834 (Ct. App. 2008).

Simply because a condition of release may be imposed upon a defendant does not mean that the breach of such a condition requires the forfeiture of a bail bond. State v. Holmes, 57 Ohio St. 3d 11, 564 N.E.2d 1066 (1991).

9 People v. Golla, 714 S.W.2d 606 (Mo. Ct. App. E.D. 1986); Com. v. Chopak, 532 Pa. 227, 615 A.2d 696 (1992); Addison v. Albany County, 2018 WY 148, 432 P.3d 513 (Wyo. 2018).

10 State v. Anderson, 204 Vt. 17, 2016 VT 127, 162 A.3d 1249 (2016).

11 State v. Hernandez, 1 Neb. App. 830, 511 N.W.2d 535 (1993); State v. Mitchell, 421 S.C. 365, 807 S.E.2d 193 (2017).

If the conditions of a bond were not complied with, the court having jurisdiction over the defendant in the criminal action was required to enter an order declaring the bail to be forfeited. State v. Achterberg, 201 Wis. 2d 291, 548 N.W.2d 515 (1996).

12 State v. Holmes, 57 Ohio St. 3d 11, 564 N.E.2d 1066 (1991).

A state rule regarding forfeiture of bail, required that upon a breach of a condition of a recognizance, the prosecuting attorney must move the court for a declaration of forfeiture of the bail, and the clerk of the court must forthwith send notice of the forfeiture to the county counsel who must forthwith proceed to collect the forfeited amount. State v. Poon, 244 N.J. Super. 86, 581 A.2d 883 (App. Div. 1990).

13 State v. Veatch, 132 Ariz. 394, 646 P.2d 279 (1982).

14 State v. Anderson, 204 Vt. 17, 2016 VT 127, 162 A.3d 1249 (2016).

15 Com. v. Hann, 622 Pa. 636, 81 A.3d 57 (2013).

16 Com. v. Hann, 622 Pa. 636, 81 A.3d 57 (2013).

17 State v. International Fidelity Ins. Co., 238 Ariz. 22, 355 P.3d 624 (Ct. App. Div. 2 2015); State v. Anderson, 204 Vt. 17, 2016 VT 127, 162 A.3d 1249 (2016).

18 State v. International Fidelity Ins. Co., 238 Ariz. 22, 355 P.3d 624 (Ct. App. Div. 2 2015); Com. v. Hann, 622 Pa. 636, 81 A.3d 57 (2013); State v. Policao, 402 S.C. 547, 741 S.E.2d 774 (Ct. App. 2013); State v. Anderson, 204 Vt. 17, 2016 VT 127, 162 A.3d 1249 (2016).

19 Com. v. Hann, 622 Pa. 636, 81 A.3d 57 (2013).

20 State v. Anderson, 204 Vt. 17, 2016 VT 127, 162 A.3d 1249 (2016).

21 Com. v. Hann, 622 Pa. 636, 81 A.3d 57 (2013); State v. Anderson, 204 Vt. 17, 2016 VT 127, 162 A.3d 1249 (2016).

22 Com. v. Hann, 622 Pa. 636, 81 A.3d 57 (2013).

23 Com. v. Hann, 622 Pa. 636, 81 A.3d 57 (2013).

24 Com. v. Hann, 622 Pa. 636, 81 A.3d 57 (2013).

25 State v. Policao, 402 S.C. 547, 741 S.E.2d 774 (Ct. App. 2013).

26 State v. International Fidelity Ins. Co., 238 Ariz. 22, 355 P.3d 624 (Ct. App. Div. 2 2015).

As to failure to appear due to incarceration, see §§ 157 to 161.

27 State v. International Fidelity Ins. Co., 238 Ariz. 22, 355 P.3d 624 (Ct. App. Div. 2 2015); Com. v. Hann, 622 Pa. 636, 81 A.3d 57 (2013); State v. Policao, 402 S.C. 547, 741 S.E.2d 774 (Ct. App. 2013); State v. Anderson, 204 Vt. 17, 2016 VT 127, 162 A.3d 1249 (2016).

28 State v. International Fidelity Ins. Co., 238 Ariz. 22, 355 P.3d 624 (Ct. App. Div. 2 2015).

29 State v. International Fidelity Ins. Co., 238 Ariz. 22, 355 P.3d 624 (Ct. App. Div. 2 2015).

For purposes of multifactor test used in determining whether justice requires full forfeiture of a bail bond, "mitigating factors" refer to any explanation for the defendant's conduct in violating the terms of his bail bond. In re Hann, 2015 PA Super 44, 111 A.3d 757 (2015).

30 Fed. R. Crim. P. 46(f)(1).

Justice required forfeiture of defendant's appearance bond, since additional costs were expended to locate him after he absconded, government was inconvenienced by preparing for change-of-plea hearing for which defendant failed to appear and by additional burden of attaining revocation and estreature of surety bond, and forfeiture was reasonably related to public interest in effectuating defendant's appearance and ensuring obedience to court orders. U.S. v. Gonzalez, 452 Fed. Appx. 844 (11th Cir. 2011).

31 U.S. v. Terrell, 983 F.2d 653 (5th Cir. 1993).

32 United States v. Brooks, 872 F.3d 78 (2d Cir. 2017), cert. denied, 139 S. Ct. 171, 202 L. Ed. 2d 37 (2018).

33 Brown v. U.S., 410 F.2d 212 (5th Cir. 1969).

Bond language that the defendant promised to comply with any and all orders relating to his appearance in a case was sufficiently broad to include directions by a pretrial services officer to report weekly, so that the violation of such condition supported the forfeiture of a bond. U.S. v. Terrell, 983 F.2d 653 (5th Cir. 1993).

34 Com. v. Chopak, 532 Pa. 227, 615 A.2d 696 (1992), stating that to take the asserted position would effectively negate the option of bail revocation anytime a court seeks to regain custody of a defendant and would force a bail forfeiture on every occasion.

Revocation, generally, see §§ 123 to 126.

35 U.S. v. Lacey, 982 F.2d 410 (10th Cir. 1992).

36 O'Laughlin v. Barton, 549 N.E.2d 1040 (Ind. 1990).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 128

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

1. Forfeiture

a. In General

§ 128. Forfeiture of bail for nonappearance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 27, 28, 75.2, 83, 84

Generally, if a defendant fails to appear as lawfully required, the defendant's bail may be forfeited and judgment entered for the amount of the bail.[1] In other words, if a defendant does not appear at the proper time and place as required by the bail bond, a surety under the bail bond becomes the absolute debtor of the state for the amount of the bond.[2]

In some jurisdictions, the court is required to order forfeiture of a bond if a defendant under the bond fails to appear as required.[3] The rule, under some statutes, is that if a person released on bail "willfully" fails to appear before a court or judicial officer, any security pledged to guarantee his or her appearance is forfeited.[4] However, in other jurisdictions, the element of willfulness is not an element in the determination of forfeiture.[5]

Under federal law, if a person fails to appear before a court as required, and the person executed an appearance bond pursuant to law or is subject to the release on conditions set forth by law, the judicial officer may, regardless of whether the person has been charged with an offense, declare any property designated pursuant to law to be forfeited to the United States.[6]

In some jurisdictions, the general rule is that a surety on a bond is discharged by law when sentence is pronounced, so that a trial court correctly forfeits an appearance bond where sentence has not yet been pronounced, and the accused did not appear at a sentencing hearing.[7] However, where the rule applies that a surety of a bond is discharged by law when the defendant is sentenced, a bond may not be forfeited when the defendant fails to appear to begin serving that sentence.[8] Similarly, where the rule is that an original appearance bond does not apply to appearances after an adjudication of guilt or innocence, and that the

original appearance bond does not guarantee, inter alia, appearances during or after a presentence investigation, a forfeiture of an original appearance bond was improper insofar as it was based on a defendant's failure to report to the prison after being found guilty in a case and during the time of the presentence investigation.[9]

A defendant's appearance bond may remain in effect through his or her appeal, and thus the bail bond is subject to forfeiture after the defendant fails to surrender when his or her conviction is affirmed on appeal.[10]

Footnotes

1 State v. Anderson, 319 Conn. 288, 127 A.3d 100 (2015); State v. Costello, 489 N.W.2d 735 (Iowa 1992); State v. Jones, 200 So. 3d 950 (La. Ct. App. 4th Cir. 2016), writ denied, 222 So. 3d 48 (La. 2017).
When the defendant failed to appear for either his hearing or psychological evaluation he breached the condition of his bail and the trial court had the authority to order the forfeiture of bail funds. Com. v. Chopak, 532 Pa. 227, 615 A.2d 696 (1992).

2 State v. Valles, 140 N.M. 458, 2004-NMCA-118, 143 P.3d 496 (Ct. App. 2004).

3 State v. Letscher, 888 N.W.2d 880 (Iowa 2016); State v. Jones, 38 Kan. App. 2d 924, 173 P.3d 1179 (2008); Big Louie Bail Bonds, LLC v. State, 435 Md. 398, 78 A.3d 387 (2013) (under state rule); Commonwealth v. Unitt, 91 Mass. App. Ct. 93, 71 N.E.3d 167 (2017); State v. Atkins, 470 S.W.3d 789 (Mo. Ct. App. E.D. 2015); State v. McGurk, 163 N.H. 584, 44 A.3d 568 (2012); State v. Adams, 220 N.C. App. 406, 725 S.E.2d 94 (2012); State v. Dye, 2018-Ohio-4551, 2018 WL 5920501 (Ohio Ct. App. 5th Dist. Fairfield County 2018); State v. Solomon, 2016 WL 700621 (W. Va. 2016).

4 Adkerson v. State, 731 P.2d 1218 (Alaska 1987).
A state statute provided that a person who has been released on bond who willfully fails to appear in court must, in addition to other penalties, forfeit his bond. State v. Boatwright, 310 S.C. 281, 423 S.E.2d 139 (1992).

5 State v. Veatch, 132 Ariz. 394, 646 P.2d 279 (1982).

6 18 U.S.C.A. § 3146(d), referring to 18 U.S.C.A. § 3142.
The court may dispose of a charged offense by ordering the forfeiture of certain specified property under statute, if a fine in the amount of the property's value would be an appropriate sentence for the charged offense. Fed. R. Crim. P. 46(i), referring to 18 U.S.C.A. §§ 3142(c)(1)(B)(xi), 3146(d).
Criminal liability for failure to appear under federal law, generally, see §§ 172 to 176.

7 Sonny Livingston Bail Bonds, Inc. v. State, 460 So. 2d 1345 (Ala. Civ. App. 1984).
Liability of surety until sentence is pronounced, see § 118.

8 Rice v. State, 488 So. 2d 1351 (Ala. 1986).

9 Accredited Sur. & Cas. Co. v. Putnam County, 561 So. 2d 1243 (Fla. 5th DCA 1990).

10 Bob Cole Bail Bonds, Inc. v. State, 99 Ark. App. 354, 260 S.W.3d 754 (2007).
Appeal bonds and duration of liability, generally, see § 120.

End of Document

8A Am. Jur. 2d Bail and Recognizance § 129

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

1. Forfeiture

a. In General

§ 129. Forfeiture of bail for breach of conditions other than nonappearance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 27, 28, 75.1, 75.3, 83, 84

A.L.R. Library

Forfeiture of bail for breach of conditions of release other than that of appearance, 68 A.L.R.4th 1082

The terms of a bond that broaden the liability of a party beyond the liability contemplated by statute, which allows the forfeiture of a bail bond only for failure to appear, are ineffective[1] because such terms transform monetary bail from a guarantor of appearance into a potentially punitive tool useful in the enforcement of all bail conditions.[2] However, in other jurisdictions, forfeiture may be authorized where bond conditions other than appearances in court have been breached.[3] In this regard, a bond forfeiture may be ordered under the applicable federal rule as to forfeitures for violations of conditions of the bond other than nonappearance.[4] In fact, under the applicable provision, a breach of any condition of a bond is grounds for forfeiture.[5] Furthermore, estreatment of a bond for a violation of the good behavior condition has been deemed proper.[6]

Where a bond forfeiture is a discretionary decision for the trial court, it has been said that incarceration in another jurisdiction is one factor to be considered in exercising that discretion.[7] In this regard, the view has been followed that the incarceration, and its surrounding circumstances, should be factors with which the court makes the determination whether to forfeit the bail, and whether the incarceration arises from a new crime committed while the defendant was free on bond, or from an offense that

preceded his or her arrest in the state, should be considered.[8] However, in the absence of a condition of an appearance bond predicated upon a violation of state law, forfeiture on that basis is inappropriate.[9]

Footnotes

1 State v. Romero, 2007-NMSC-030, 141 N.M. 733, 160 P.3d 914 (2007).
Bail forfeiture was unavailable as a remedy for a presentence releasee's failure to comply with the condition of bail requiring her to undergo drug testing. State v. Sheldon, 2005-Ohio-2686, 2005 WL 1283681 (Ohio Ct. App. 6th Dist. Wood County 2005).

2 State v. Mottolese, 199 Vt. 470, 2015 VT 81, 124 A.3d 809 (2015).

3 State v. Anderson, 319 Conn. 288, 127 A.3d 100 (2015); American Funding Services v. State, 41 A.3d 711 (Del. 2012); Com. v. Hann, 622 Pa. 636, 81 A.3d 57 (2013); State v. Saback, 534 A.2d 1155 (R.I. 1987); State v. Mitchell, 421 S.C. 365, 807 S.E.2d 193 (2017); Application of Allied Fidelity Ins. Co., 664 P.2d 1322 (Wyo. 1983).
The trial court could forfeit defendant's cash bond based on defendant's acknowledgement that he consumed alcohol, even though the bond did not specifically prohibit arrestee from drinking alcohol; the bond orders required defendant to comply with the conditions of his probation, and one of the conditions of probation was to refrain from the use and possession of alcoholic beverages. State v. Wilkie, 2016 ND 97, 879 N.W.2d 431 (N.D. 2016).
An order requiring forfeiture of a property bond was not an abuse of discretion or excessive, in view of clear and convincing evidence that the defendant willfully violated the conditions of pretrial release by staying out past curfew and consuming alcohol. Clemons v. Com., 152 S.W.3d 256 (Ky. Ct. App. 2004).

4 U.S. v. Terrell, 983 F.2d 653 (5th Cir. 1993), referring to Fed. R. Crim. P. 46.

5 U.S. v. Passi, 62 F.3d 1278 (10th Cir. 1995), referring to Fed. R. Crim. P. 46(e)(1).
Under applicable federal law, a bail bond and its collateral may be forfeited not only for the defendant's failure to appear, but also for other violations of bond conditions, including the defendant's commission of a crime. U.S. v. Gigante, 85 F.3d 83 (2d Cir. 1996).

6 State v. Boatwright, 310 S.C. 281, 423 S.E.2d 139 (1992).

7 State v. Fry, 128 Idaho 50, 910 P.2d 164 (Ct. App. 1994).

8 State v. Fry, 128 Idaho 50, 910 P.2d 164 (Ct. App. 1994).

9 U.S. v. Passi, 62 F.3d 1278 (10th Cir. 1995).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 130

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

1. Forfeiture

b. Procedure

§ 130. Procedure for forfeiture of bail, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 27 to 30, 33, 85 to 87, 89(1) to 89(3)

Forms

Forms relating to forfeiture, generally, see Am. Jur. Pleading and Practice Forms, Bail and Recognizance [Westlaw®(r) Search Query]

Bond forfeitures are not favored by law[1] and accordingly, the state must strictly comply with the statutory procedure in bond forfeiture actions in order to obtain a valid bond forfeiture[2] and the statutes imposing the forfeiture of surety bonds are to be strictly construed in favor of the party against whom the penalty is sought to be imposed.[3]

A statute of limitations may apply to a state's action against a bond surety for the forfeiture of a bond.[4]

The obligor's liability under a bond may, under some statutes, be enforced, without the necessity of an independent action, in the manner prescribed by statute.[5] Furthermore, under a federal rule, the court may, upon the government's motion, enforce the surety's liability without an independent action.[6] The federal provision contemplates a summary proceeding designed to resolve efficiently the obligors' liability on the bond.[7] The Federal Rules of Civil Procedure do not govern proceedings under the rule;

instead, whatever local rules or practices prevail in the federal district court will govern such proceedings, provided that those rules or practices are not inconsistent with the Federal Rules of Criminal Procedure.[8]

Footnotes

1 State v. Williams, 977 So. 2d 154 (La. Ct. App. 5th Cir. 2008).

2 State v. Williams, 977 So. 2d 154 (La. Ct. App. 5th Cir. 2008).
Proceedings for forfeiture of bail and judgment therein may only be enforced in strict compliance with the statute. State v. Costello, 489 N.W.2d 735 (Iowa 1992).

3 Leon County v. Aloi-Williams Bonding Agency, 652 So. 2d 464 (Fla. 1st DCA 1995).

4 State v. McClinton, 369 S.C. 167, 631 S.E.2d 895 (2006).

5 People v. Caro, 753 P.2d 196 (Colo. 1988); State v. Achterberg, 201 Wis. 2d 291, 548 N.W.2d 515 (1996) (where a statute provided that liability of the obligors on a bail bond could be enforced, instead, upon the motion of a district attorney).

6 Fed. R. Crim. P. 46(f)(3)(C).

7 U.S. v. Lacey, 982 F.2d 410 (10th Cir. 1992).

8 U.S. v. Lacey, 982 F.2d 410 (10th Cir. 1992).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 131

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

1. Forfeiture

b. Procedure

§ 131. Calling accused at time of required appearance as prerequisite to forfeiture of bail

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 27 to 30, 85 to 87

In some states, before forfeiture of bail may be ordered, it must be shown that there was a call of the defendant who did not appear, and a forfeiture is improper absent evidence on the record of such a call.[1] Under this view, proper procedure, therefore, prior to forfeiting a bail bond, is to make a call at the time appearance is required, and if no answer is made, to have the record reflect the call and the failure to answer.[2] Under statutes in some states, the names of all persons who have given bail or have become bound by recognizance to appear in any court, must be called in open court on the day and at the time they are respectively bound to appear, and if they fail to appear promptly and respond thereto, their default must be entered, and the entry is evidence of the breach of their appearance bond or recognizances.[3]

Footnotes

1 State v. Dodd, 346 N.W.2d 42 (Iowa Ct. App. 1984); Benson v. State, 476 S.W.3d 136 (Tex. App. Austin 2015), petition for discretionary review refused, (Dec. 16, 2015).
Forfeiture for nonappearance, generally, see § 128.

2 Com. v. Miller, 189 Pa. Super. 345, 150 A.2d 585 (1959).

3 State v. Camara, 81 Haw. 324, 916 P.2d 1225 (1996).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 132

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

1. Forfeiture

b. Procedure

§ 132. Orders of forfeiture of bail; orders to show cause why judgment should not be entered

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 27 to 30, 33, 85 to 87, 89(1) to 89(3)

Statutes in some states provide that if the accused does not comply with the conditions of the bail bond, the court having jurisdiction must enter an order declaring the bail to be forfeited.[1] The rule in some jurisdictions is that if a condition of a bond requires the defendant to appear for trial, if the accused fails to appear at the set time, the court should (1) immediately order the bond to be forfeited, and (2) order both the accused and the surety to show cause why judgment on the forfeiture should not be entered against them.[2] That is, under some statutes, if a defendant released on a surety's bond failed to appear as directed, the court must order a conditional forfeiture and a show cause order against the defendant and the surety or sureties.[3]

Practice Tip:

In a bail bond forfeiture proceeding, it is the surety's duty to show cause why a bail bond should not be forfeited.[4]

In some jurisdictions where the court is required to order forfeiture of a bond if a defendant under the bond fails to appear as required, the court does not have discretion to enter the order of forfeiture at any time, but must enter that order promptly—certainly within one or two business days after the nonappearance becomes evident.[5]

While the better practice would call for the entry of a written order, in some jurisdictions, applicable state law does not require a written order for the forfeiture of bail.[6]

Footnotes

1 State v. Seybert, 229 Mont. 183, 745 P.2d 687 (1987).

2 People v. Caro, 753 P.2d 196 (Colo. 1988).

3 State v. Blake, 642 So. 2d 959 (Ala. 1994), holding that the applicable statutes were not unconstitutionally vague or overbroad.
Forfeiture for nonappearance, generally, see § 128.

4 Hot Springs Bail Bond v. State, 90 Ark. App. 370, 206 S.W.3d 306 (2005).
A presentence releasee's presence in court at a show cause hearing, at the time specified in the notice of default and an adjudication of forfeiture, constituted a showing of good cause why a judgment of partial forfeiture could not be entered against the surety. State v. Sheldon, 2005-Ohio-2686, 2005 WL 1283681 (Ohio Ct. App. 6th Dist. Wood County 2005).

5 Wiegand v. State, 112 Md. App. 516, 685 A.2d 880 (1996).

6 State v. Fry, 128 Idaho 50, 910 P.2d 164 (Ct. App. 1994).

8A Am. Jur. 2d Bail and Recognizance § 133

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

1. Forfeiture

b. Procedure

§ 133. Notice requirements for nonappearance causing forfeiture of bail

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 32, 88

Under statute, a notice of nonappearance of a defendant may be required to be sent to the surety[1] although it has been held that a failure to provide notice to the bail agents or sureties of the defendants' appearance dates is not a defense to the forfeiture of a bond when the defendants fail to appear; the statute stating that notice "shall" be given sets out the ideal procedure to be followed but recognizes the practical difficulties of having to provide notice every time a defendant has a trial or hearing date.[2] Additionally, in some jurisdictions, a judgment cannot be entered on an order of forfeiture of bail until notice and an opportunity to be heard have been given to the defendant and the surety.[3]

Observation:

The purpose of enforcing strict compliance with notice provisions in bail bond forfeiture statutes is to provide prompt and adequate notice to the surety so the surety can quickly identify its bond obligation, locate the defendant, and surrender him or her to the court for trial.[4]

Under rules in some states, the clerk, after the ordering of a forfeiture upon the failure of a defendant to appear as required, must "promptly notify" any surety on the bond of the forfeiture of the bond; this language has been construed as requiring notice to be given within one or two business days after the nonappearance becomes evident.[5] Under some state statutes, notice of an order of forfeiture of bail must be mailed "forthwith" by the court to the defendant and sureties, if any, at their last known address.[6] The use of the term "forthwith" in such a provision requires that the trial court mail the notice promptly and without unnecessary delay.[7]

A statute requiring notice of an order of forfeiture of bail to be mailed "forthwith" does not require a court to notify the surety of a defendant's nonappearance, but only of the forfeiture order.[8] However, statutes in some states do require that the surety and the local agent of each surety, or the depositor if he or she is not the defendant, be given notice of the defendant's nonappearance prior to forfeiture of the undertaking or money instead of a bail bond.[9]

Practice Tip:

Literal compliance with a notice requirement has been deemed necessary.[10]

Footnotes

1 Louisiana Bail Bonds, Inc. v. State, 930 So. 2d 1113 (La. Ct. App. 2d Cir. 2006) (the 60-day period for a notice of nonappearance to be sent to all sureties began to run from the date a signed and executable bond forfeiture judgment was entered following the accused's second failure to appear in court, rather than from the date the accused first failed to appear in court); State v. Hawkins, 382 N.J. Super. 458, 889 A.2d 1081 (App. Div. 2006) (notice of defendant's failure to appear for a prearraignment interview mandated by rule). Bondsperson, who executed bail bond as undersigned surety, rather than insurance company, which conferred power of attorney on bondsperson to execute the bond, was "surety," and thus, State was required to provide notice to bondsperson, rather than insurance company, of bail forfeiture judgment entered in criminal case; legislative history for forfeiture statute indicated that intent was to require notice to the "bail bondsman," bail bond statute provided that insurance producer qualified as surety when insurance bond was posted as bail, and bondsperson was the surety, insurance producer, and bail agent, whereas insurance company was the surety insurer. State v. Nelson, 139 Haw. 147, 384 P.3d 923 (Ct. App. 2016), cert. granted, 2017 WL 474398 (Haw. 2017) and judgment aff'd, 140 Haw. 123, 398 P.3d 712 (2017), cert. denied, 138 S. Ct. 682, 199 L. Ed. 2d 537 (2018).
Forfeiture for nonappearance, generally, see § 128.

2 § 156.

3 § 139.
A trial court provided a bail bond surety with a notice of declaration of forfeiture within four days of the declaration, as required by statute, where the surety received the notice on day four after the declaration of forfeiture. State v. Pacheco, 143 N.M. 851, 2008-NMCA-055, 182 P.3d 834 (Ct. App. 2008).

4 State v. McLaurin, 927 So. 2d 570 (La. Ct. App. 5th Cir. 2006).

5 Wiegand v. State, 112 Md. App. 516, 685 A.2d 880 (1996).

6 Moreno v. People, 775 P.2d 1184 (Colo. 1989); State v. Sunday, 224 Mont. 340, 729 P.2d 1319 (1986).

7 Moreno v. People, 775 P.2d 1184 (Colo. 1989).

8 State v. Sunday, 224 Mont. 340, 729 P.2d 1319 (1986).

9 State v. American Bankers Ins. Co., 106 Nev. 880, 802 P.2d 1276 (1990).

Under a state statute, the clerk of the court was required to give the surety at least 72 hours' notice, exclusive of Saturdays, Sundays, and holidays, before the time of the required appearance of the defendant, but such notice would not be necessary if the time for appearance was within 72 hours from the time of arrest, or if the time is stated on the bond. Accredited Sur. & Cas. Co. v. Putnam County, 561 So. 2d 1243 (Fla. 5th DCA 1990).

10 State v. American Bankers Ins. Co., 106 Nev. 880, 802 P.2d 1276 (1990).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 134

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

1. Forfeiture

b. Procedure

§ 134. Notice requirements for nonappearance causing forfeiture of bail—Form

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 32, 88

A notice requirement of a state statute, which does not specify the form of notice required, has been deemed satisfied where the bonds officer, present when the accused failed to appear for arraignment, is orally instructed by the court to produce the defendant on a certain date, and is, thus, given actual notice.[1] Notice of forfeiture of a bail bond surety also was sufficient to provide notice of forfeiture to a bail bonds company, even though the notice sent by the court listed a different case number than that in the company records where the notice included the bond number, which matched the number on the copy retained by the company, and it advised that in order to preserve the bond, the company was required to locate the defendant within 90 days.[2] Similarly, a statutory requirement to notify a bail bond surety of the prosecutor's name, address, telephone number, and fax number was satisfied by substantial, rather than strict, compliance, and the fact that notice of the defendant's nonappearance did not include the prosecutor's fax number did not entitle the surety to exoneration of the bond; the statute was directory, rather than mandatory, and the omission did not prejudice the surety.[3]

Footnotes

1 State v. Flint, 355 So. 2d 482 (Fla. 2d DCA 1978).

2 State v. Castro, 145 Idaho 993, 188 P.3d 935 (Ct. App. 2008).

3 Aaron and Morey Bonds and Bail v. Third Dist. Court, 2007 UT 24, 156 P.3d 801 (Utah 2007).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 135

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

1. Forfeiture

b. Procedure

§ 135. Service of process on surety for bail bond forfeiture

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 32, 88

By entering into a bond, each surety submits to the district court's jurisdiction and irrevocably appoints the district clerk as its agent to receive service of any filings affecting its liability.[1] The government must serve any motion, and notice as the court prescribes, on the district clerk.[2] If so served, the clerk must promptly mail a copy to the surety at its last known address.[3] Similar provisions are contained in some state statutes.[4]

Footnotes

1 Fed. R. Crim. P. 46(f)(3)(B).

2 Fed. R. Crim. P. 46(f)(3)(C).

3 Fed. R. Crim. P. 46(f)(3)(C).

4 State v. Achterberg, 201 Wis. 2d 291, 548 N.W.2d 515 (1996).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 136

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

1. Forfeiture

b. Procedure

§ 136. Hearing requirements for forfeiture of bail bond, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 34 to 36, 90 to 92

Generally speaking, where a bail bond has been forfeited, the principal and sureties are entitled to be heard before a final judgment on the bond is entered.[1] There is authority for the view that where the enforcement of the penalty of a forfeited bond is considered to be a separate action from the criminal action in which the bond was filed, the sureties are entitled to due process and a judicial determination of the issues.[2]

Criminal rules in some states, in which forfeiture is authorized for the "willful" failure of a defendant to appear before a court or judicial officer, provide that if the person released on bail on the giving or pleading of security fails to appear as required, the judge or magistrate before whom the person released was to appear must set a time for hearing to determine if the nonappearance was willful.[3] If, after the hearing, the judge or magistrate determines that the nonappearance of the person released on bail was willful, the security, given or pledged, will be forfeited.[4]

A 22-month delay between the time of the accused's arrest and the date of his bond forfeiture hearing did not constitute a due process violation under the Fifth Amendment, there being no denial of the Due Process Clause by the failure to hold an immediate hearing in a bond forfeiture proceeding under the applicable federal rule.[5]

Footnotes

1 Com. v. Hann, 622 Pa. 636, 81 A.3d 57 (2013); Wallace v. State, 193 Tenn. 182, 245 S.W.2d 192, 29 A.L.R.2d 941 (1952).

2 Thompson v. State, 221 Ind. 164, 46 N.E.2d 600 (1943); City of Cleveland v. Loviness, 71 Ohio L. Abs. 105, 125 N.E.2d 890 (Ct. App. 8th Dist. Cuyahoga County 1955).

3 Adkerson v. State, 731 P.2d 1218 (Alaska 1987).

Forfeiture for nonappearance, generally, see § 128.

4 Adkerson v. State, 731 P.2d 1218 (Alaska 1987).

5 U.S. v. Dunn, 781 F.2d 447 (5th Cir. 1986), referring to proceeding under Fed. R. Crim. P. 46(e).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 137

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

1. Forfeiture

b. Procedure

§ 137. Notice and hearing requirements as to conditional bail forfeiture orders; orders to show cause

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 32, 88

Where the state has sought forfeiture of a bail bond, and defendant or his surety opposes it, a hearing should be held.[1]

Under some state statutes, the defendant and the sureties must receive notice of a conditional forfeiture order within a specified period of time or the surety's liability will be discharged and unless such notice is timely received by the surety, and the surety files an adequate and timely written response explaining why the bond should not be forfeited, under which circumstances, the court is to set aside the conditional forfeiture, a hearing is to be set to determine if the bond should be forfeited, and if no response is filed, the court is to enter a final forfeiture order.[2] Under other states' laws, if at any time it appears to the court that a condition of an appearance bond has been violated, it must require the parties and any surety to show cause why the bond should not be forfeited, setting a hearing thereon within 10 days.[3] However, where notice was required to be given to the defendant and his sureties to show cause why judgment should not be entered for the amount of bail, following a failure of the defendant to appear, and entry on the record thereof, where the defendant's attorney had actual notice of the matters, this notice was imputed to the defendant, and was sufficient.[4] Where a statute requires notice to show cause, the purpose of such notice provision is not to allow the surety to fulfill its duty to surrender the defendant.[5]

Footnotes

1 Com. v. Hann, 622 Pa. 636, 81 A.3d 57 (2013).

2 State v. Blake, 642 So. 2d 959 (Ala. 1994).

3 State v. Gutierrez Barajas, 153 Ariz. 511, 738 P.2d 786 (Ct. App. Div. 2 1987) (under state rule).

Under a state statute, upon declaration of forfeiture, the magistrate or clerk of the court adjudging forfeiture was required, as to recognizances, to notify the accused and each surety by ordinary mail at the address shown by them in their affidavits of qualification or on the record of the case, of the default of the accused and the adjudication of forfeiture and require each of them to show cause on or before a date certain to be stated in the notice, and which was not to be less than 20 nor more than 30 days from the date of mailing notice, why judgment should not be entered against each of them for the penalty stated in the recognizance. State v. Holmes, 57 Ohio St. 3d 11, 564 N.E.2d 1066 (1991).

Forfeiture for nonappearance, generally, see § 128.

4 State v. Roghair, 390 N.W.2d 123 (Iowa 1986).

5 State v. Costello, 489 N.W.2d 735 (Iowa 1992).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 138

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

1. Forfeiture

b. Procedure

§ 138. Proof in proceeding for bail forfeiture

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 34, 90

In a proceeding for bail bond forfeiture, the state has the burden of proof.[1] The state's case in a bond forfeiture proceeding consists of the bond and the judicial declaration of the forfeiture of the bond, which is the judgment nisi.[2] Once this has been established, the defendant or surety must then prove that one of the elements has not been complied with or raise a fact issue on his affirmative defense of exoneration;[3] it is the defendant's and the surety's burden to prove that it would be inequitable to insist upon the forfeiture and that forfeiture is not required in the public interest.[4] The defendant or surety must prove by a preponderance of the evidence that justice does not require full enforcement of the order.[5]

In bail forfeiture proceedings, the trial court generally may rely on the representations of defense counsel.[6]

Footnotes

1 Com. v. Hann, 622 Pa. 636, 81 A.3d 57 (2013); Kubosh v. State, 241 S.W.3d 60 (Tex. Crim. App. 2007).

2 Kubosh v. State, 177 S.W.3d 156 (Tex. App. Houston 1st Dist. 2005), petition for discretionary review refused, (Sept. 14, 2005).

3 Kubosh v. State, 177 S.W.3d 156 (Tex. App. Houston 1st Dist. 2005), petition for discretionary review refused, (Sept. 14, 2005).

4 State v. Ramirez, 378 N.J. Super. 355, 875 A.2d 1025 (App. Div. 2005); Com. v. Hann, 622 Pa. 636, 81 A.3d 57 (2013).

In a proceeding for forfeiture of a bail bond, a summoned bonding company should offer proof or argument as to why the bail bond should not be forfeited. Hot Springs Bail Bond v. State, 90 Ark. App. 370, 206 S.W.3d 306 (2005).

5 Com. v. Hann, 622 Pa. 636, 81 A.3d 57 (2013).

6 People v. Ranger Ins. Co., 135 Cal. App. 4th 820, 37 Cal. Rptr. 3d 575 (4th Dist. 2005).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 139

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

1. Forfeiture

c. Judgment and Execution

§ 139. Judgment and execution of bail bond forfeiture, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 37, 93

A judgment of bond forfeiture is not an ordinary judgment, but is specifically governed by statute, including statutes pertaining to the setting aside of such a judgment.[1]

Observation:

The essential nature and purpose of a judgment of bond forfeiture is the rendering of a final judgment in a civil matter.[2]

A judgment cannot be entered on an order of forfeiture of bail until notice[3] and an opportunity to be heard have been given to the defendant and the surety.[4] A judgment of forfeiture may be entered by a trial court upon determining that a defendant failed to comply with a condition of a bail bond, and in the failure of the defendant to justify the failure to meet the condition in question.[5] In some jurisdictions, an appropriate order of judgment forfeiting all or part of the amount of the bond, may be entered if at a hearing to show cause why the bond should not be forfeited, the violation is not explained or excused.[6]

Under statutes in some states, if the defendant does not appear and surrender to the court having jurisdiction within a specified time from the date of the forfeiture or within that period satisfy the court that appearance and surrender by the defendant is impossible and without his or her fault, the court must—in some jurisdictions, on motion of the district attorney[7]—enter judgment for the state against the defendant[8] and any surety.[9] However, such a statute only applies when a defendant does not appear and surrender to the court within the specified period from the forfeiture and thus, with regard to such a statute requiring entry of judgment on motion of the district attorney, a court has discretion to enter judgment on an order forfeiting bail absent such a motion when the defendant appears within the statutorily specified period from the date of forfeiture.[10] In some states, after declaration of a forfeiture for breach of bond conditions, the court must, on motion enter a judgment of default, and execution may issue.[11] Similarly, under federal rules, if it does not set aside a bail forfeiture, the court must, upon the government's motion, enter a default judgment.[12] However, under some statutes, execution upon a judgment of forfeiture is automatically stayed for a specified period from the date that notice of the entry of the judgment is given to the surety, although it will issue forthwith upon the expiration of the period in question unless the principal or surety has filed a motion, within that time, showing good cause why execution should not issue.[13]

In some jurisdictions, when bail is forfeited by the failure of a defendant to appear as required, a conditional judgment must be entered against the bonds officers.[14] In other jurisdictions, when a forfeiture of bail is not set aside, the court must, on motion, enter a judgment of default and execution may issue thereon.[15]

In some states, the forfeiture of a bond is not final until the trial court enters a default judgment in accordance with the applicable state statute.[16] In this regard, it should be noted that there is a distinction between forfeiture and judgment on the forfeiture.[17] Once forfeiture of the bond is declared by the court, the surety becomes liable for payment on the bond unless, within a statutorily specified time from such declaration, the surety or the defendant appear and satisfactorily excuse the defendant's failure to comply with the conditions of bail.[18] At that point, the surety cannot be compelled by the state to pay the bond; however, once judgment is entered on the forfeiture, it becomes binding on the surety, and the state can seek execution of its judgment.[19]

Observation:

Failure to pay a bail bond forfeiture constitutes a breach of the bond, precluding relief from the forfeiture.[20]

Practice Tip:

The Federal Rules of Criminal Procedure—and not the Federal Rules of Civil Procedure—govern motions for judgment on bond forfeiture.[21]

Footnotes

1 State v. Wheeler, 508 So. 2d 1384 (La. 1987).

2 Ranger Ins. Co. v. State, 941 So. 2d 182 (La. Ct. App. 3d Cir. 2006).

3 Moreno v. People, 775 P.2d 1184 (Colo. 1989); State v. Nix, 195 So. 3d 691 (La. Ct. App. 4th Cir. 2016), writ denied, 219 So. 3d 1103 (La. 2017).

Under a state statute, a judgment upon a forfeiture of bail could not be entered until after 10 days' notice to the defendant and the defendant's surety to show cause why judgment should not be entered for the amount of bail, following a failure of the defendant to appear. State v. Costello, 489 N.W.2d 735 (Iowa 1992).

Notice of forfeiture, generally, see § 133.

4 Moreno v. People, 775 P.2d 1184 (Colo. 1989); State v. Atkins, 470 S.W.3d 789 (Mo. Ct. App. E.D. 2015).

Hearing, generally, see § 136.

5 State v. Cooley, 50 N.C. App. 544, 274 S.E.2d 274 (1981).

6 State v. Gutierrez Barajas, 153 Ariz. 511, 738 P.2d 786 (Ct. App. Div. 2 1987).

Under a state statute, after a declaration of forfeiture, and the required notice to show cause why judgment should not be entered against the defendant and his or her sureties if good cause by production of the body of the accused or otherwise had not been shown, the court or magistrate was required to enter judgment against the sureties, and to award execution therefor as in civil cases. State v. Holmes, 57 Ohio St. 3d 11, 564 N.E.2d 1066 (1991).

7 State v. Achterberg, 201 Wis. 2d 291, 548 N.W.2d 515 (1996).

Forfeiture for nonappearance, generally, see § 128.

8 People v. Caro, 753 P.2d 196 (Colo. 1988); State v. Achterberg, 201 Wis. 2d 291, 548 N.W.2d 515 (1996).

9 State v. Achterberg, 201 Wis. 2d 291, 548 N.W.2d 515 (1996).

A trial court did not abuse its discretion when it entered judgment of forfeiture of a bail bond; the defendant failed to appear for trial and was still at large, it was not until one year later, after six hearings, that the court entered a judgment of forfeiture, and the record did not support the surety's contention that the trial court inappropriately considered its business practices. State v. Pacheco, 143 N.M. 851, 2008-NMCA-055, 182 P.3d 834 (Ct. App. 2008).

10 State v. Achterberg, 201 Wis. 2d 291, 548 N.W.2d 515 (1996).

11 People v. Golla, 714 S.W.2d 606 (Mo. Ct. App. E.D. 1986).

12 Fed. R. Crim. P. 46(f)(3)(A).

13 State v. Camara, 81 Haw. 324, 916 P.2d 1225 (1996).

14 Kirby v. State, 416 So. 2d 1010 (Ala. 1982).

15 State v. Poon, 244 N.J. Super. 86, 581 A.2d 883 (App. Div. 1990).

16 State v. Krage, 404 N.W.2d 524 (S.D. 1987).

17 State v. Sunday, 224 Mont. 340, 729 P.2d 1319 (1986).

18 State v. Sunday, 224 Mont. 340, 729 P.2d 1319 (1986).

19 State v. Sunday, 224 Mont. 340, 729 P.2d 1319 (1986).

20 Singh Bail Bonds v. Brock, 88 So. 3d 960 (Fla. 2d DCA 2011).

As to relief from bail bond forfeiture, see §§ 141 to 165.

21 U.S. v. Lacey, 982 F.2d 410 (10th Cir. 1992).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 140

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

1. Forfeiture

c. Judgment and Execution

§ 140. Amount of bail forfeiture judgment

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 37, 93, 95

In some jurisdictions, the court's decision to enter judgment for the amount of the bail on forfeiture of a bond is discretionary with the court.[1] Furthermore, in some jurisdictions, if a defendant fails to appear, the entire amount of bail must be forfeited,[2] or, by statute, the judgment entered for the state upon the forfeiture of any bond or recognizance given in a criminal cause, must be for the full amount of the penalty thereof.[3] Even so, it has sometimes been said that the judgment against the surety need not be for the full amount of the bond, but that it is within the sound discretion of the court which required the bond to state the amount of the forfeiture.[4] Thus, the court may exercise its discretion in determining whether to forfeit all, part, or none of the appearance bond, and whether any part of the bond not forfeited should be exonerated.[5]

On the other hand, statutes in some jurisdictions specifically provided that judgment may not exceed the penalty of the bond.[6] However, some state statutes do not limit a court's discretion to actual damages when determining the amount of forfeiture of a bail bond.[7] Also, under statutes in some states, requiring the entry of judgment, in some instances upon motion, if the defendant does not appear and surrender to the court having jurisdiction within a specified time from the date of the forfeiture or within that period satisfy the court that appearance and surrender by the defendant is impossible and without his or her fault, the court must enter judgment for the state for the amount of the bail and costs of the court proceedings.[8]

Under federal law, if a defendant fails to appear at the proper time and place or violates a condition of release, the surety becomes an absolute debtor of the United States for the bond amount.[9]

It has been said that the amount of a bond forfeiture ought to bear some reasonable relation to (1) the cost and inconvenience to the government of regaining custody of the defendant, (2) the amount of delay caused by the defendant's default and the stage of the proceedings at the time of his or her disappearance, (3) the willfulness of the defendant's breach of the conditions and the prejudice suffered by the government, and (4) the public interest and necessity of effectuating the appearance of the defendant.[10] Similarly, it has been stated that, in deciding how much, if any, of the bond to forfeit, the court should consider, among other things: (1) the willfulness of the defendant's violation of bail conditions; (2) the surety's participation in locating and apprehending the defendant; (3) the costs, inconvenience, and prejudice suffered by the state as a result of the violation; (4) any intangible costs; (5) the public's interest in ensuring a defendant's appearance; and (6) any mitigating factors.[11]

Footnotes

1 State v. Costello, 489 N.W.2d 735 (Iowa 1992).

2 State v. Seybert, 229 Mont. 183, 745 P.2d 687 (1987).

3 State v. Camara, 81 Haw. 324, 916 P.2d 1225 (1996).

4 State v. Konvalin, 165 Neb. 499, 86 N.W.2d 361 (1957).
Where, after forfeiture of bail, the defendant is apprehended without the assistance of his or her surety, judgment should be entered against the surety for the penal sum of the bond, unless the court, in its discretion, enters judgment for a lesser amount; but judgment should not be for an amount less than the cost occasioned by defendant's failure to appear. People v. Johnson, 155 Colo. 392, 395 P.2d 19 (1964).

5 State v. Bail Bonds USA, 223 Ariz. 394, 224 P.3d 210 (Ct. App. Div. 1 2010).

6 State v. Holmes, 57 Ohio St. 3d 11, 564 N.E.2d 1066 (1991).

7 State v. Seybert, 231 Mont. 372, 753 P.2d 325 (1988).

8 People v. Caro, 753 P.2d 196 (Colo. 1988); State v. Achterberg, 201 Wis. 2d 291, 548 N.W.2d 515 (1996).

9 U.S. v. Torres, 807 F.3d 257 (7th Cir. 2015).

10 U.S. v. Parr, 594 F.2d 440 (5th Cir. 1979).

11 State v. Fry, 128 Idaho 50, 910 P.2d 164 (Ct. App. 1994); State v. Seybert, 229 Mont. 183, 745 P.2d 687 (1987).
The evidence was insufficient to establish that the Commonwealth suffered cost, inconvenience, or prejudice as a result of the defendant's arrest on drug charges while free on a surety bond, and thus there was no basis for forfeiture of the total amount of defendant's surety bond to county. Com. v. Riley, 2008 PA Super 33, 946 A.2d 696 (2008).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 141

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

a. In General

§ 141. Relief from forfeiture of bail bond, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

A.L.R. Library

Governor's authority to remit forfeited bail bond, 77 A.L.R.2d 988

The general rule is that appearance bond forfeitures are not favored.[1] Statutes pertaining to the vacation of forfeiture of bail must be strictly construed in favor of the surety to avoid the harsh result of a forfeiture.[2] Relief from bond forfeiture is governed in some jurisdictions by statute, and not by common law; to set aside a forfeiture, a condition of the statute must be met.[3] More specifically, relief from a forfeiture, before the forfeiture becomes a final judgment, is exclusive and limited to the reasons provided in the bond forfeiture statute.[4] Under such a statute, the court lacks authority to reduce the amount of a bail bond forfeiture after denying a surety's motion to set aside the bond forfeiture, where, by its plain language, the governing statute provides the exclusive relief for setting aside a bond forfeiture that had not yet become a final judgment, the only relief authorized under the statute is the setting aside of the bond forfeiture, and there is no partial relief provided under the plain language of the statute.[5]

Failure to pay a bail bond forfeiture constitutes a breach of the bond, precluding relief from the forfeiture.[6]

Observation:

The remission of bail forfeitures is a practice calculated to encourage a bondsman to seek actively the return of absent defendants.[7]

A forfeiture of bail which is set aside is thereby annulled and made void, just as if it had never been ordered.[8] However, on the other hand, it has sometimes been said that the setting aside of a judgment of bond forfeiture does not constitute the creation of a new agreement or the extension of the terms of the original agreement or a remission of the debt under the bail contract, releasing the surety; rather than extinguishing the surety's obligations on the contract, the setting aside of a bond forfeiture judgment places the surety and defendant in the position they occupied before the bond was forfeited.[9]

Under federal law, appropriations available to refund money erroneously received and deposited in the Treasury are available to refund any part of forfeited bail deposited into the Treasury and ordered remitted under the Federal Rules of Criminal Procedure.[10]

Footnotes

1 State v. Young, 106 So. 3d 116 (La. Ct. App. 2d Cir. 2012).
2 State v. Free At Last Bail Bonds, 285 Ga. App. 734, 647 S.E.2d 402 (2007).
3 People v. Albitar, 374 Ill. App. 3d 718, 313 Ill. Dec. 547, 872 N.E.2d 530 (1st Dist. 2007).
4 State v. Chestnut, 806 S.E.2d 332 (N.C. Ct. App. 2017).
5 State v. Knight, 805 S.E.2d 751 (N.C. Ct. App. 2017).
6 Singh Bail Bonds v. Brock, 88 So. 3d 960 (Fla. 2d DCA 2011).
7 Com. v. Hernandez, 2005 PA Super 336, 886 A.2d 231 (2005).
8 Migdol v. U.S., 298 F.2d 513, 91 A.L.R.2d 1283 (9th Cir. 1961).
9 State v. Wheeler, 508 So. 2d 1384 (La. 1987).
10 18 U.S.C.A. § 3151.

End of Document

8A Am. Jur. 2d Bail and Recognizance § 142

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

a. In General

§ 142. Discretion of court to grant relief from bail bond forfeitures

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

The power to grant relief from forfeitures of bail bonds is generally within the discretion of the court.[1] The discretionary power of the courts to grant relief from forfeiture of a bond or recognizance, has sometimes been specifically provided for in state statutory provisions.[2]

The discretion of the trial court is not limited to enforcing or remitting the forfeiture in its entirety; rather, the judge may enforce the forfeiture in part and vacate it in part.[3] In this vein, under federal rules, after entering a judgment of default, the court may remit in whole or in part the judgment under the same conditions specified by the rule pertaining to the setting aside of forfeiture.[4] In some states, however, statutes invest discretionary authority to order a maximum remission only up to, but not more than, a specified percent of a forfeiture, under certain conditions, and a trial court errs in directing a bonding company to remit 100% of the full amount of the bond.[5]

Where relief from forfeiture is discretionary, the courts must exercise a sound discretion[6] and must not act arbitrarily or unreasonably.[7] To establish an abuse of discretion in refusal to vacate a bail forfeiture order, the aggrieved party must show that the court misapplied the law, exercised manifestly unreasonable judgment, or acted on the basis of bias, partiality, or ill-will to that party's detriment.[8]

Footnotes

1 United States v. Vickers, 144 F. Supp. 3d 1146 (E.D. Cal. 2015); Indiana Lumbermen's Mut. Ins. Co. v. U.S., 640 A.2d 1036 (D.C. 1994); State v. Wharton, 162 Idaho 666, 402 P.3d 1119 (Ct. App. 2017); People v. Albitar, 374 Ill. App. 3d 718, 313 Ill. Dec. 547, 872 N.E.2d 530 (1st Dist. 2007); Big Louie Bail Bonds, LLC v. State, 435 Md. 398, 78 A.3d 387 (2013); State v. Echols, 850 S.W.2d 344 (Mo. 1993); State v. Hernandez, 1 Neb. App. 830, 511 N.W.2d 535 (1993); State v. Mungia, 446 N.J. Super. 318, 141 A.3d 395 (App. Div. 2016); Matter of EBIC Insurance Company, Surety, By Eatman, 59 Misc. 3d 357, 68 N.Y.S.3d 841 (Sup 2017); State v. Najmuddeen Salaam, 2018-Ohio-4815, 2018 WL 6338320 (Ohio Ct. App. 5th Dist. Delaware County 2018); In re Hann, 2015 PA Super 44, 111 A.3d 757 (2015); State v. Mitchell, 421 S.C. 365, 807 S.E.2d 193 (2017).

2 1 Quick Bail Bonds, LLC v. State, 2017 WL 5948170 (Ala. Civ. App. 2017); State v. Seybert, 229 Mont. 183, 745 P.2d 687 (1987); McKenna v. State, 247 S.W.3d 716 (Tex. Crim. App. 2008); State v. Achterberg, 201 Wis. 2d 291, 548 N.W.2d 515 (1996).

The decision whether to set aside a forfeiture or exonerate a bond, under a criminal rule providing that a court which has forfeited bail before remittance of forfeiture may direct that the forfeiture be set aside, upon such condition as the court may impose, if it appears that justice does not require enforcement of the forfeiture, is committed to the trial court's discretion. State v. Quick Release Bail Bonds, 144 Idaho 651, 167 P.3d 788 (Ct. App. 2007).

3 Allegheny Mut. Cas. Co. v. U.S., 622 A.2d 1099 (D.C. 1993).

The trial court is vested with sound discretion in deciding the matter of bail bond forfeiture, nonforfeiture, or partial forfeiture. State v. Kramer, 141 Wash. App. 892, 174 P.3d 1193 (Div. 3 2007), rev'd on other grounds, 167 Wash. 2d 548, 219 P.3d 700 (2009).

State rules and case law permit a remission in whole or part, when it is equitable to do so in the totality of circumstances and where the equities justify only a partial remission, total remission is inappropriate. State v. Poon, 244 N.J. Super. 86, 581 A.2d 883 (App. Div. 1990).

4 Fed. R. Crim. P. 46(f)(4), referring to Fed. R. Crim. P. 46(f)(2), (f)(3).

A judge has virtually unbridled discretion in granting motions to remit a bond forfeiture. U.S. v. Diaz, 811 F.2d 1412 (11th Cir. 1987).

5 Leon County v. Aloi-Williams Bonding Agency, 652 So. 2d 464 (Fla. 1st DCA 1995).

6 People v. Albitar, 374 Ill. App. 3d 718, 313 Ill. Dec. 547, 872 N.E.2d 530 (1st Dist. 2007); State v. Sedam, 34 Kan. App. 2d 624, 122 P.3d 829 (2005); State v. Wright, 1943 OK 356, 193 Okla. 383, 143 P.2d 801 (1943); Com. v. Hernandez, 2005 PA Super 336, 886 A.2d 231 (2005); State v. Kramer, 141 Wash. App. 892, 174 P.3d 1193 (Div. 3 2007), rev'd on other grounds, 167 Wash. 2d 548, 219 P.3d 700 (2009).

7 Central Cas. Co. v. State, 233 Ark. 602, 346 S.W.2d 193 (1961); State v. Torres, 2004 OK 12, 87 P.3d 572 (Okla. 2004).

8 Com. v. Gaines, 2013 PA Super 208, 74 A.3d 1047 (2013).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 143

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

a. In General

§ 143. Effect of defendant being at large on right to relief from bail forfeiture; failure to produce defendant

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

In most cases, remission of forfeited bail will not be appropriate unless the defendant has been returned to the jurisdiction of the court;[1] the setting aside of a forfeiture or its remission while the defendant is still at large would undermine the purpose of bail bonds, i.e., to insure the presence of the accused.[2] Indeed, when a defendant becomes a fugitive and flees abroad, there is a presumption against remission of forfeited bail.[3] However, in some jurisdictions, the rule is that where the surety has failed to produce the defendant in open court when his or her presence is required in accordance with the terms of the bond, forfeiture and judgment for the amount of bail may be avoided only when the bonds officers show some reasonable excuse for failing to produce the defendant and, when a satisfactory explanation for the defendant's failure to appear has been established, the court may refuse to enter judgment and may set aside the forfeiture.[4]

Footnotes

1 State v. Ventura, 196 N.J. 203, 952 A.2d 1049 (2008).

2 U.S. v. Gutierrez, 771 F.2d 1001 (7th Cir. 1985); People v. Albitar, 374 Ill. App. 3d 718, 313 Ill. Dec. 547, 872 N.E.2d 530 (1st Dist. 2007).

3 State v. Mungia, 446 N.J. Super. 318, 141 A.3d 395 (App. Div. 2016).

4 State v. Costello, 489 N.W.2d 735 (Iowa 1992).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 144

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

a. In General

§ 144. Effect of design to evade justice on right to relief from bail forfeiture; waiver of extradition

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

The view has sometimes been followed that in order to avoid forfeiture it must be shown that there was no design to evade justice.[1] There is no defense to forfeiture of a bond if the principal voluntarily waives extradition to another state, resulting in his or her inability to appear before the court.[2]

Footnotes

1 Nix v. State, 213 So. 2d 554 (Miss. 1968) (overruled on other grounds by, Wood v. State, 345 So. 2d 616 (Miss. 1977)); State v. Scott, 1962 OK 16, 371 P.2d 704 (Okla. 1962); State v. Van Wagner, 16 Wash. 2d 54, 132 P.2d 359 (1942).

2 Phillips v. State, 185 So. 2d 157 (Miss. 1966) (overruled on other grounds by, Wood v. State, 345 So. 2d 616 (Miss. 1977)).

8A Am. Jur. 2d Bail and Recognizance § 145

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

b. Grounds

(1) In General

§ 145. Grounds for relief from bail forfeiture, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

Good cause for a defendant's absence must be shown by a bondsman to avoid forfeiture.[1] Generally, a showing of sufficient cause for the accused's failure to appear, as would warrant remittitur of a forfeited bail bond, is a showing that the party did not break his or her recognizance intentionally with the design of evading justice, or without a sufficient cause or reasonable excuse, such as an unavoidable accident or inevitable necessity preventing his or her appearance.[2] If good cause is shown for the defendant's failure to appear before judgment is entered against the surety, the court must exonerate a reasonable amount of the surety's liability under the bail bond.[3]

Relief from forfeitures of bail bonds will generally be granted where it appears to the satisfaction of the court that uncontrollable circumstances prevented the defendant's appearance pursuant to the stipulations in the bond,[4] and that his or her inability to appear was not attributable to his or her own fault.[5] Thus, a bond forfeiture is not warranted based upon a defendant's failure to appear, where there is no evidence that the surety had received proper notice of the defendant's appearance date.[6] In this regard, under the law of some states, the impossibility of securing the defendant's presence may play a role in assessing a surety's motion for remission of forfeited bail and in the appropriate case, relief may be granted.[7] In other jurisdictions, the rule is that if a bond is forfeited because of ignorance or unavoidable impediment rather than willful default—that is, the willful failure to appear—the trial court may, on affidavit showing cause or excuse, remit the forfeiture in full or in part.[8] Furthermore, there is some authority for the view that it is only where performance of the conditions of a bail bond have been prevented by an act of God, an act of the obligee, or an act of law that the sureties are entitled to relief from forfeiture of a bond.[9] Whether

extraordinary circumstances exist, as a ground upon which a surety may obtain relief from a final judgment of forfeiture, is a heavily fact-based inquiry and should be reviewed on a case-by-case basis.[10]

Remission of a bond cannot be authorized under a rule of criminal procedure providing for relief from a judgment based on, inter alia, any reason justifying relief from the operation of the judgment, where the rule applies only to permit postjudgment relief in extreme or extraordinary situations, and there is no proof that such extraordinary circumstances existed to justify remission of the bond.[11] Whether the evidence presented rises to the level of showing extraordinary circumstances, as a basis for a surety to receive relief from a final judgment of a bail bond forfeiture, is a heavily fact-based inquiry and should be reviewed on a case-by-case basis.[12]

Observation:

Failure to extradite a located fugitive defendant from a foreign country does not excuse sureties from their bail contract with the state, and normally does not justify remission of forfeited bail if the state has no ability to obtain extradition of the defendant; thus, remission is generally inappropriate if there is no extradition treaty with the foreign country, if the state requests and the federal government seeks extradition but the foreign country declines to extradite, or if the state makes a good faith request for extradition but the federal government declines to seek extradition.[13] If a surety locates a fugitive defendant in a foreign country, and extradition is possible, but the state elects not to request that the federal government seek extradition, there is no absolute bar against remission of forfeited bail, as the state's election may change the equities; the trial court should consider the factors governing remission, including the efforts of the surety to prevent flight to a foreign country, to locate the defendant in the foreign country, and to aid extradition, and the state's reasons for not seeking extradition.[14]

Footnotes

1 State v. Naegle, 2017-NMCA-017, 388 P.3d 692 (N.M. Ct. App. 2016); State v. Durfey, 2018 OK 58, 422 P.3d 151 (Okla. 2018).

2 Safety Nat. Cas. Corp. v. State, 225 S.W.3d 684 (Tex. App. El Paso 2006), decision rev'd on other grounds, 273 S.W.3d 157 (Tex. Crim. App. 2008).
Forfeiture for nonappearance, generally, see § 128.

3 Hot Springs Bail Bond v. State, 90 Ark. App. 370, 206 S.W.3d 306 (2005).

4 State v. Diaz, 128 Haw. 215, 286 P.3d 824 (2012); Wilson v. State ex rel. Edmondson, 1957 OK 47, 308 P.2d 315, 63 A.L.R.2d 827 (Okla. 1957).

5 People v. Albitar, 374 Ill. App. 3d 718, 313 Ill. Dec. 547, 872 N.E.2d 530 (1st Dist. 2007).

6 State v. Richardson, 222 So. 3d 73 (La. Ct. App. 2d Cir. 2017).

7 State v. Ventura, 196 N.J. 203, 952 A.2d 1049 (2008).

8 State v. Boatwright, 310 S.C. 281, 423 S.E.2d 139 (1992).

9 Big Louie Bail Bonds, LLC v. State, 435 Md. 398, 78 A.3d 387 (2013); Vaughn v. Com., 395 S.W.2d 763 (Ky. 1965); Nix v. State, 213 So. 2d 554 (Miss. 1968) (overruled on other grounds by, Wood v. State, 345 So. 2d 616 (Miss. 1977)); State v. Liakas, 165 Neb. 503, 86 N.W.2d 373 (1957); Wilson v. State ex rel. Edmondson, 1957 OK 47, 308 P.2d 315, 63 A.L.R.2d 827 (Okla. 1957).

10 State v. Navarro, 787 S.E.2d 57 (N.C. Ct. App. 2016).

11 People v. Caro, 753 P.2d 196 (Colo. 1988).

12 State v. Edwards, 172 N.C. App. 821, 616 S.E.2d 634 (2005).

13 State v. Mungia, 446 N.J. Super. 318, 141 A.3d 395 (App. Div. 2016).

14 State v. Mungia, 446 N.J. Super. 318, 141 A.3d 395 (App. Div. 2016).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 146

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

b. Grounds

(1) In General

§ 146. Justice as not requiring forfeiture of bail bond

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

Under federal rules, the court may set aside in whole or in part a bail forfeiture upon any condition the court may impose if it appears that justice does not require bail forfeiture.[1] Similarly, some state statutes and rules provide that an order declaring bail to be forfeited if the conditions of the bond are not complied with, may be set aside upon such conditions as the court imposes if it appears that justice does not require the enforcement of the forfeiture.[2] Such a provision has been said to give the trial court discretion to set aside the forfeiture at the request of an interested person.[3]

Practice Tip:

State courts, in interpreting such rules, have sometimes looked to federal cases interpreting the applicable federal rule for guidance.[4]

Footnotes

1 Fed. R. Crim. P. 46(f)(2)(B).

2 Indiana Lumbermen's Mut. Ins. Co. v. U.S., 640 A.2d 1036 (D.C. 1994) (rule); State v. Two Jinn, Inc., 148 Idaho 874, 230 P.3d 766 (Ct. App. 2010) (rule); State v. Echols, 850 S.W.2d 344 (Mo. 1993) (rule); State v. Poon, 244 N.J. Super. 86, 581 A.2d 883 (App. Div. 1990) (rule); Com. v. Hernandez, 2005 PA Super 336, 886 A.2d 231 (2005) (rule); State v. Achterberg, 201 Wis. 2d 291, 548 N.W.2d 515 (1996) (statute).

3 State v. Echols, 850 S.W.2d 344 (Mo. 1993).

4 Application of Allied Fidelity Ins. Co., 664 P.2d 1322 (Wyo. 1983), referring to Fed. R. Crim. P. 46.

End of Document

8A Am. Jur. 2d Bail and Recognizance § 147

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

b. Grounds

(1) In General

§ 147. Appearance, surrender, or apprehension, of defendant after default as ground for relief from bail forfeiture

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 24, 80

Generally, in the absence of the principal's willfulness in defaulting, the sureties may surrender the principal at any time before the entry of final judgment in a proceeding to enforce their liability.[1] Statutes in some states, which generally require that if the court finds that a recognizance or any part of it should be forfeited, a default must be recorded, make an exception where the defendant is brought before the court within a specified number of days from the finding of default.[2] Furthermore, some statutes provide that if the defendant appears before or is delivered to the court within a specified number of months from the finding of default, the court must remit any bond previously ordered forfeited by the courts, less such costs as the court may direct.[3] Also, under some state statutory provisions, if because of a final forfeiture the surety has paid a sum into the court, but then the surety locates the defendant, within a specified number of months of the final forfeiture order, if the administration of justice has not been thwarted the judge may remit the sum forfeited and order the comptroller to issue a refund to the surety.[4] However, the surrender of a defendant after default for violations of the conditions of a recognizance bond does not entitle a surety to a remission of the forfeiture of the bond as a matter of right.[5]

Observation:

An "appearance," as contemplated by a statute providing that a judgment forfeiting an appearance bond may be set aside on "surrender or appearance of defendant," does not require that defendant appear "of record" or "in court."[6]

Under some state statutes, if the defendant is arrested and returned to the county of jurisdiction of the court prior to judgment on the forfeiture, the bond forfeiture must be set aside.[7] Under statutes in other states, a bonds officer may obtain a refund of the money forfeited on final judgment, where the defendant is returned within a specified number of months from that judgment; however, such a statute does not contemplate a stay and remission of forfeiture where the defendant is returned within the required time, but the judgment remains unpaid.[8] Pursuant to some statutes, production of the body of the defendant on the date or dates specified in the notice of default and adjudication of forfeiture constitutes a showing of good cause why judgment should not be entered against each surety of the defendant.[9] In this regard, under a statute where a judgment on a forfeiture would be entered after a 30-day period from notice given to the surety unless a motion or application of the principal or principals, surety or sureties, or any of them, showing good cause why execution should not issue upon the judgment, is filed with the court, good cause why execution should not issue upon the judgment of forfeiture could be shown by the defendant surrendering or being surrendered prior to the expiration of the 30-day period.[10] In support of this rule, it has been said that to hold that the surety may not secure relief from the judgment of forfeiture because the principal was apprehended by law enforcement officials, and not the surety, would discourage bonds officers from cooperating with law enforcement officials in their pursuit of a defendant.[11] However, a surety is not entitled to have a bond forfeiture set aside upon surrender of the defendant to a sheriff in another state, under a statute governing motions to set aside forfeiture upon a surety's surrender of a defendant to a sheriff in the county where the defendant is bonded or where the defendant is bonded to appear.[12] Additionally, statutes in some states specifically provide for the discharge of an undertaking or deposit, if, within a specified number of days from the forfeiture, a person, other than the defendant, who has provided bail for the defendant, brings the defendant before the court.[13] Under other statutory provisions, the court must set aside the forfeiture of bail or bond within a specified period from the time of the forfeiture judgment, if the person who forfeited bond or bail is apprehended and the ends of justice have not been thwarted and the county has been repaid its costs for apprehending the person.[14] Also, under some provisions, a surety is not entitled to a full remission after forfeiture if the defendant is arrested as a fugitive through efforts unrelated to the surety within that period.[15] Additionally, a bail bondsman's mere participation in the search for the defendant is not enough to warrant remission of bail forfeitures; the apprehension or return of the defendant must either be effected by the efforts of the bondsman or those efforts must at least have a substantial impact on his or her apprehension and return.[16] However, a surety that arranges for the capture of a defendant for whom it had posted a bail bond, and that pays the costs of transporting the defendant back to the jurisdiction, is entitled to have the bail bond forfeiture discharged.[17]

Under federal law, the court may set aside in whole or in part a bail forfeiture upon any condition the court may impose if the surety later surrenders into custody the person released on the surety's appearance bond.[18]

Footnotes

1 State v. O'Day, 36 Wash. 2d 146, 216 P.2d 732 (1950).
By state rule, within 90 days from the date the defendant failed to appear, a surety could satisfy an order of forfeiture on a bond, by, among other things, producing the defendant in court. Wiegand v. State, 112 Md. App. 516, 685 A.2d 880 (1996).

Forfeiture for nonappearance, generally, see § 128.
Right to arrest or surrender principal, generally, see §§ 101 to 106.

2 Commonwealth v. Allstate Bonding Co., 246 Va. 189, 435 S.E.2d 396 (1993).

3 Commonwealth v. Allstate Bonding Co., 246 Va. 189, 435 S.E.2d 396 (1993).

4 State v. Blake, 642 So. 2d 959 (Ala. 1994), holding that such statute was not unconstitutionally vague or overbroad.

5 State v. Mitchell, 421 S.C. 365, 807 S.E.2d 193 (2017).

6 State v. Melancon, 925 So. 2d 552 (La. Ct. App. 1st Cir. 2005), writ denied, 925 So. 2d 1263 (La. 2006).

7 Cardoza v. State, 98 So. 3d 1217 (Fla. 3d DCA 2012); State v. Askland, 784 N.W.2d 60 (Minn. 2010); State v. Atkins, 470 S.W.3d 789 (Mo. Ct. App. E.D. 2015).

8 Sides v. State, 519 So. 2d 1222 (Miss. 1988).

9 State v. Holmes, 57 Ohio St. 3d 11, 564 N.E.2d 1066 (1991).

10 State v. Camara, 81 Haw. 324, 916 P.2d 1225 (1996).

11 State v. Camara, 81 Haw. 324, 916 P.2d 1225 (1996).

12 State v. Hollars, 176 N.C. App. 571, 626 S.E.2d 850 (2006).

13 State v. Fry, 128 Idaho 50, 910 P.2d 164 (Ct. App. 1994).

14 People v. Munley, 175 Mich. App. 399, 438 N.W.2d 292 (1989).

15 State v. Harris, 382 N.J. Super. 67, 887 A.2d 728 (App. Div. 2005).

16 Com. v. Hernandez, 2005 PA Super 336, 886 A.2d 231 (2005).

17 Mike Snapp Bail Bonds v. Orange County, 913 So. 2d 88 (Fla. 5th DCA 2005).
A trial court that forfeited a $20,000 bail bond when a defendant charged with felonious assault fled after the first day of trial abused its discretion by remitting only $8,000 of the bond to the surety after the defendant was recaptured, even though the surety conducted a minimal investigation of a defendant's flight risk before posting bond, and collected a premium for the possibility he might flee; the surety located the defendant after he fled and enabled the police to recapture him. State v. Thornton, 2006-Ohio-786, 2006 WL 401594 (Ohio Ct. App. 2d Dist. Montgomery County 2006).

18 Fed. R. Crim. P. 46(f)(2)(A).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 148

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

b. Grounds

(1) In General

§ 148. Illness or physical disability of defendant as ground for setting aside bail forfeiture

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

An illness or physical disability preventing the principal's compliance with the condition of a bail bond by appearing at the prescribed time ordinarily is a sufficient ground for vacation of a forfeiture.[1] An illness of a defendant has sometimes been regarded as an "act of God" rendering the failure of performance excusable,[2] at least insofar as it can be shown that such ailment was of such nature as to prevent the principal from appearing and that the defendant did appear as soon as he or she was well enough.[3]

Footnotes

1 Turner v. Com., 338 S.W.2d 213 (Ky. 1960).

2 United Bonding Ins. Co. v. State, 252 Miss. 428, 175 So. 2d 182 (1965); State v. Pelley, 222 N.C. 684, 24 S.E.2d 635 (1943).
Act of God, generally, see § 145.

3 Turner v. Com., 338 S.W.2d 213 (Ky. 1960).

8A Am. Jur. 2d Bail and Recognizance § 149

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

b. Grounds

(1) In General

§ 149. Death of defendant as ground for setting aside bail forfeiture

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

A.L.R. Library

Death of principal as exoneration, defense, or ground for relief, of sureties on bail or appearance bond, 63 A.L.R.2d 830

Relief from forfeiture on a bail bond is proper upon the death of the principal, on the grounds that the appearance of the principal has been prevented by an act of God.[1] However, where the governing statute provides that the trial court may remit all or a portion of a forfeited bond on the appearance, surrender, or rearrest of the accused, it does not contemplate the subsequent death of the accused, and thus a motion to remit a bail bond judgment following the defendant's death is properly denied.[2] Moreover, the doctrine of impossibility of performance does not entitle the surety to the remission of the forfeiture of the bond where the surety fails to perform its obligations prior to the death of the defendant.[3]

Observation:

A bail bond surety is not entitled to relief from forfeiture, where it is unable to authenticate a foreign death certificate and prove a defendant's death.[4]

Footnotes

1 Tyler v. Capitol Indem. Ins. Co., 206 Md. 129, 110 A.2d 528 (1955); State v. Wynne, 356 Mo. 1095, 204 S.W.2d 927 (1947); State v. Pelley, 222 N.C. 684, 24 S.E.2d 635 (1943).
Act of God, generally, see § 145.

2 State v. Najmuddeen Salaam, 2018-Ohio-4815, 2018 WL 6338320 (Ohio Ct. App. 5th Dist. Delaware County 2018).

3 State v. Sunshine State Bail Bonds, Inc., 967 So. 2d 1084 (Fla. 2d DCA 2007) (a bail bond surety was not entitled, under the doctrine of impossibility of performance, to a remission of forfeiture of a bond it posted for a defendant who failed to appear and was later killed by police in another state; the surety was not excused of its obligation to take precautionary action to prevent the defendant from leaving the jurisdiction).

4 State v. Ramirez, 378 N.J. Super. 355, 875 A.2d 1025 (App. Div. 2005).

8A Am. Jur. 2d Bail and Recognizance § 150

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

b. Grounds

(1) In General

§ 150. Insanity of defendant as ground for setting aside bail forfeiture

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

The insanity of the accused does not relieve a surety from a forfeiture unless the illness rendered it reasonably impossible to produce the accused.[1]

Practice Tip:

Whether the insanity is such as to make it impossible for the accused to appear is a matter of fact which must be proved to the satisfaction of the judge or jury.[2]

Sureties may be relieved from forfeiture of a bond for the failure to produce the principal at trial where such failure is due to the fact that the principal is in confinement because of insanity.[3] However, where the principal is committed to a state hospital for

the insane, it is the duty of the sureties to notify the court, and if they fail to do so and the principal escapes from the hospital, they may not claim a remission of the forfeiture on the ground that he or she escaped from the custody of the state.[4]

Footnotes

1 Ramer v. State ex rel. Ward, 1956 OK 37, 302 P.2d 139 (Okla. 1956).

2 Hood v. State, 231 Ark. 772, 332 S.W.2d 488 (1960).

3 Hood v. State, 231 Ark. 772, 332 S.W.2d 488 (1960).

4 People v. Fiannaca, 306 N.Y. 513, 119 N.E.2d 363 (1954).

8A Am. Jur. 2d Bail and Recognizance § 151

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

b. Grounds

(1) In General

§ 151. Dismissal of charges or guilty plea as grounds for setting aside bail forfeiture

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

The dismissal of charges prior to final judgment, but after the failure to appear as required, does not require remission of a forfeiture.[1] Furthermore, that the sureties are ignorant of the whereabouts of the principal,[2] or that they do all things authorized by law in their efforts to bring the willfully defaulting accused back for trial,[3] has been deemed an insufficient excuse for the failure of the sureties to produce the principal for trial in accordance with the obligation of the bond, nor does the fact that a principal, after forfeiture, pleads guilty and is sentenced necessarily require vacation of a forfeiture of a bail bond.[4]

Footnotes

1 Fly v. State, 550 S.W.2d 684 (Tex. Crim. App. 1977).

2 State v. Benedict, 234 Iowa 1178, 15 N.W.2d 248 (1944).

3 State v. Wynne, 356 Mo. 1095, 204 S.W.2d 927 (1947).

4 Nix v. State, 213 So. 2d 554 (Miss. 1968) (overruled on other grounds by, Wood v. State, 345 So. 2d 616 (Miss. 1977)).

8A Am. Jur. 2d Bail and Recognizance § 152

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

b. Grounds

(1) In General

§ 152. Acts of government as obligee on bond as ground for setting aside bail forfeiture

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

Where an act of the state in which the criminal charge is pending prevents the appearance of the accused in discharge of the conditions of his or her bail bond, the sureties on the bond may assert such act in defense against a forfeiture of the bond.[1] The surety is also relieved from forfeiture where a defaulting defendant who could have been produced in court prior to judgment on the bond is not present by reason of the state's inaction.[2]

Deportation may or may not provide sufficient reason for a court to set aside a bond forfeiture.[3]

Footnotes

1 People v. National Auto & Cas. Ins. Co., 92 Cal. App. 3d 481, 154 Cal. Rptr. 872 (2d Dist. 1979); Wilson v. State ex rel. Edmondson, 1957 OK 47, 308 P.2d 315, 63 A.L.R.2d 827 (Okla. 1957).

2 State v. Foster, 512 S.W.2d 448 (Mo. Ct. App. 1974).

3 State v. Two Jinn, Inc., 151 Idaho 725, 264 P.3d 66 (2011) (deportation not unforeseen supervening act excusing bail bond agent's performance); Big Louie Bail Bonds, LLC v. State, 435 Md. 398, 78 A.3d 387 (2013) (deportation is act of law constituting reasonable grounds for defendant's failure to appear); State v. Lazaro, 190 N.C. App. 670, 660 S.E.2d 618 (2008) (deportation is not one of the six exclusive grounds that allows the court to set aside a bond forfeiture).

A defendant who was deported before his trial failed to establish that his inability to appear before the court within 30 days of a bail bond forfeiture was through no fault of his own, as was required to entitle the defendant to have the forfeiture vacated; the record did not show that the defendant made any effort to contact the trial court to explain his situation, that he requested a stay of deportation in order to resolve pending criminal charges, or that the surety made any effort to notify the court of the defendant's voluntary departure. People v. Albitar, 374 Ill. App. 3d 718, 313 Ill. Dec. 547, 872 N.E.2d 530 (1st Dist. 2007).

A surety was entitled to have a judgment entered against her on a forfeiture of a bail bond set aside after the defendant failed to appear; the defendant's failure to appear was not willful, and the surety could not have caused him to appear, inasmuch as state officials had surrendered the defendant to federal immigration service officials who then deported him and ordered him not to return to the United States. People v. Escalera, 121 P.3d 306 (Colo. App. 2005).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 153

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

b. Grounds

(2) Irregularities or Invalidity of Bond or Procedures

§ 153. Irregularities in bail bond proceedings as ground for setting aside forfeiture, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

There is some authority for the view that the sureties on a bail bond waive irregularities in the preliminary proceedings by the voluntary execution of the bond.[1] However, there is also authority for the view that if a judgment of forfeiture is entered without the preliminary steps required by a rule or statute being followed, the judgment is void and may not be enforced.[2] Furthermore, by statute in some states, the district attorney's failure to proceed against the surety within a statutorily specified time from forfeiture of the bail bond precludes recovery on the bond.[3]

Footnotes

1 Thompson v. State, 221 Ind. 164, 46 N.E.2d 600 (1943); Com. v. Davis, 194 Pa. Super. 537, 169 A.2d 111 (1961).

2 Com. v. Miller, 189 Pa. Super. 345, 150 A.2d 585 (1959).
A confession of judgment and bail forfeiture judgment entered thereon were void as a matter of law, and a movant was thus entitled to the vacatur of a bail forfeiture judgment entered against her, since the movant's affidavit of confession of judgment did not state the county in which the movant resided, the particular district of the district court in which the movant resided, the particular district of the district court that was designated for the entry of judgment, and the county in which the affidavit was executed. Corrales v. Walker, 20 Misc. 3d 285, 860 N.Y.S.2d 378 (Dist. Ct. 2008).

3 People v. Schonfeld, 74 N.Y.2d 324, 547 N.Y.S.2d 266, 546 N.E.2d 395 (1989).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 154

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

b. Grounds

(2) Irregularities or Invalidity of Bond or Procedures

§ 154. Void bond or proceedings as ground for setting aside bail forfeiture; absence of authority to take bail

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

The sureties on a bail bond which is void are not bound by the subsequent forfeiture of such bond.[1] A bail bond or recognizance in a criminal case which is void because taken without authority is void for all purposes and it may not be enforced as a common-law obligation or otherwise;[2] no estoppel to deny liability exists against the sureties in such a case.[3]

When it is determined that a bail bond forfeiture judgment entered is void, the trial court has no discretion, but is obligated to vacate the judgment.[4]

Observation:

Technical defects cannot serve to void a bond, and, thus, release the surety.[5]

Footnotes

1 Resolute Ins. Co. v. State, 290 So. 2d 599 (Miss. 1974); People v. Wirtschafter, 305 N.Y. 515, 114 N.E.2d 18 (1953); State v. Bowser, 232 N.C. 414, 61 S.E.2d 98 (1950).

Where the trial court entered an order releasing the defendant on a personal recognizance but required a surety, which was contrary to statutory procedure, as the bail bond was taken without statutory authority, it was a nullity and therefore void, and the surety was not bound by the subsequent forfeiture of the bond. People v. Wood, 101 Ill. App. 3d 648, 57 Ill. Dec. 141, 428 N.E.2d 691, 27 A.L.R.4th 241 (2d Dist. 1981).

A bail bond securing a defendant's appearance in city court on theft charges was not transferable to the district court absent compliance with a formal change of venue procedures, and thus the surety and its agent were entitled to have a bond forfeiture judgment that was entered when the defendant failed to appear in the district court set aside, even though language restricting the transferability of bond appeared in the power of attorney between the surety and the agent rather than the main text of the bond; the State did not comply with the change of venue procedures when it ordered the defendant to appear in district court, and the power of attorney was a critical and mandated portion of the bail bonding agreement. State v. Wilson, 917 So. 2d 719 (La. Ct. App. 2d Cir. 2005).

2 People v. Wirtschafter, 305 N.Y. 515, 114 N.E.2d 18 (1953).

A bonds officer was not liable on a bond under which a convicted criminal was released pending postconviction relief proceedings, either as a statutory obligation or a common-law contractual obligation, where the court that admitted the criminal to bail was without authority to release a convicted felon who was under a prison sentence. Donna's Bail Bonds Inc. v. State, 34 Ark. App. 175, 807 S.W.2d 934 (1991).

3 People v. Wirtschafter, 305 N.Y. 515, 114 N.E.2d 18 (1953); State v. Bowser, 232 N.C. 414, 61 S.E.2d 98 (1950).

Where a trial court was without authority, under a state constitution, to release an accused charged with a capital offense where the proof was evident and the presumption great, the “bond” was void ab initio, the appellant was not estopped to assert its invalidity, and an order forfeiting the bond was vacated. State v. Swinburne, 121 Ariz. 404, 590 P.2d 943 (Ct. App. Div. 2 1979).

4 Cardoza v. State, 98 So. 3d 1217 (Fla. 3d DCA 2012).

5 U.S. v. Noriega-Sarabia, 116 F.3d 417 (9th Cir. 1997).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 155

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

b. Grounds

(2) Irregularities or Invalidity of Bond or Procedures

§ 155. Illegality of custody or arrest as ground for setting aside bail forfeiture

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

There is some authority to the effect that the lawful custody of the defendant by the state under a valid warrant is necessary to support the execution of a valid bail bond or recognizance by a surety on the defendant's behalf,[1] and that the failure to issue a proper warrant after a criminal complaint is filed nullifies a bail bond given prior to issuance of such a warrant.[2] However, there is also some authority for the view that the furnishing of a bail or appearance bond constitutes a waiver of any right to object to the illegality of the arrest.[3]

Footnotes

1 State v. Haverstick, 326 S.W.2d 92, 75 A.L.R.2d 1422 (Mo. 1959).

2 State v. Fleming, 240 Mo. App. 1208, 227 S.W.2d 106 (1950).

3 Henderson v. National Mut. Cas. Co., 168 Kan. 674, 215 P.2d 225 (1950).
Any infirmity in the arrest must be raised in a proceeding to be discharged; on the posting of bail bond for appearance, such defects are deemed to have been waived. Com. v. Hill, 166 Pa. Super. 388, 71 A.2d 812 (1950).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 156

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

b. Grounds

(2) Irregularities or Invalidity of Bond or Procedures

§ 156. Failure to provide notice as ground for setting aside bail forfeiture

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

In some jurisdictions, the failure to provide notice of forfeiture of a bail bond pursuant to the applicable statutes entitles a surety to have a bond forfeiture vacated.[1] A trial court's failure to strictly comply with statutory notice and service requirements in seeking the forfeiture of a bail bond constituted reversible error, even if the surety had received actual notice that forfeiture proceedings had been instituted[2] although actual notice has been held sufficient.[3] Additionally, a trial court's failure to mail notice "forthwith," as required by some statutes, does not automatically require the remission of the surety's bond.[4] Rather, under this view, the surety must prove that he or she was prejudiced by the trial court's failure to mail the notice forthwith; and, if the delay has not prejudiced the surety, the judgment will not be vacated nor the order of forfeiture set aside.[5]

A failure to provide notice to the bail agents or sureties of the defendants' appearance dates is not a defense to the forfeiture of a bond when the defendants fail to appear; the statute stating that notice "shall" be given sets out the ideal procedure to be followed but recognizes the practical difficulties of having to provide notice every time a defendant has a trial or hearing date.[6]

Footnotes

1 Accredited Sur. & Cas. Co. v. Putnam County, 561 So. 2d 1243 (Fla. 5th DCA 1990).

A "certificate of service" section in a bail bond forfeiture notice, which was completed by the Clerk of Superior Court's Office, stating that notice was given to the surety by first class mail, was sufficient evidence to support a trial court's order denying a surety's motion to vacate a bond forfeiture judgment on the grounds that it did not receive notice of the bond forfeiture. State v. Lopez, 169 N.C. App. 816, 611 S.E.2d 197 (2005). Notice requirements, generally, see § 133.

2 Holt Bonding Co., Inc. v. State, 328 Ark. 178, 942 S.W.2d 834 (1997).

3 State v. Vargas, 141 Idaho 485, 111 P.3d 621 (Ct. App. 2005); State v. Lott, 2014-Ohio-3404, 17 N.E.3d 1167 (Ohio Ct. App. 1st Dist. Hamilton County 2014).

4 Moreno v. People, 775 P.2d 1184 (Colo. 1989).

5 Moreno v. People, 775 P.2d 1184 (Colo. 1989).

A state's failure to comply with the notice provisions of a statute governing notice in proceedings for forfeiture of appearance bonds did not preclude forfeiture of the bond, where the bail bond surety failed to show what, if any, harm resulted from the delay in the forfeiture hearing; at the hearing on the bond the forfeiture surety did not offer any evidence but simply stood on its contention that notice was not given in accordance with the statute. Troup Bonding Co., Inc. v. State, 292 Ga. App. 5, 663 S.E.2d 734 (2008).

6 State v. Boles, 810 N.E.2d 1016 (Ind. 2004).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 157

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

b. Grounds

(3) Arrest and Imprisonment of Defendant; Surrender to Authorities of Another Jurisdiction

§ 157. Rearrest of accused on same charge or for same offense as ground for setting aside bail forfeiture

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

Where, after giving bail, the principal is rearrested on the same charge or for the same offense, the sureties are generally discharged.[1] However, where a defendant taken into custody on a temporary basis pending technical corrections in the bond is released a very short time thereafter, the bail bond is still in force and its forfeiture on the nonappearance of the defendant is valid.[2]

Footnotes

1 § 112.

2 State v. Gonzalez, 69 N.J. Super. 283, 174 A.2d 209 (App. Div. 1961).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 158

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

b. Grounds

(3) Arrest and Imprisonment of Defendant; Surrender to Authorities of Another Jurisdiction

§ 158. Arrest for different offense in same jurisdiction as ground for setting aside bail forfeiture

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

A.L.R. Library

Bail: effect on surety's liability under bail bond of principal's subsequent incarceration in same jurisdiction, 35 A.L.R.4th 1192

The view has sometimes been followed that when one is bound as a surety on a bail bond for an accused for his or her appearance in a particular court at a particular time, and, before the time stipulated for the appearance, he or she is arrested and detained for a different offense in the state, thus preventing him or her from appearing at the time and place stipulated, performance by the surety is excused, and relief is available from the forfeiture of the bond.[1] Relief in such circumstances has sometimes been regarded as a matter of right, rather than merely one of discretion of the court,[2] and has been granted where the principal was imprisoned in another county of the state.[3]

However, in some jurisdictions and under some circumstances, a subsequent imprisonment in the same jurisdiction for a different offense has not been considered to be sufficient excuse for a default in appearance.[4]

Observation:

Under a state statute prescribing the methods of exoneration of a surety's liability bail bond, it was improper for a court to refuse to forfeit a bond where the principal had escaped from detention for a second offense before his appearance date under the bail bond, where such circumstances were not within the statutory methods of exoneration.[5]

Footnotes

1 Com. v. Gomez, 78 Mass. App. Ct. 569, 940 N.E.2d 488 (2011); Continental Cas. Co. v. People, 202 Misc. 740, 111 N.Y.S.2d 495 (Sup 1952); State v. Pelley, 222 N.C. 684, 24 S.E.2d 635 (1943); State v. Arrington, 147 W. Va. 753, 131 S.E.2d 382 (1963).

2 People v. Griffin, 22 Mich. App. 101, 177 N.W.2d 213 (1970).

3 Continental Cas. Co. v. People, 202 Misc. 740, 111 N.Y.S.2d 495 (Sup 1952).

4 Gourley v. State, 171 Tex. Crim. 89, 344 S.W.2d 882 (1961).
Where the surety had not moved for remission of forfeiture within the one-year limitations period, even had the motion been timely, the surety would not have been entitled to relief where the defendant's arrest and incarceration on a different charge occurred almost three months after the defendant defaulted; despite the surety's apparent contention that the state suffered no prejudice, since it had custody of the defendant, the initial default displayed the defendant's contempt for the lawful mandates of the court and interfered with the prompt disposition of the case, which was not ameliorated by his ultimate involuntary appearance. People v. Brown, 96 Misc. 2d 127, 408 N.Y.S.2d 927 (Sup 1978).

5 People v. Jaramillo, 163 Colo. 39, 428 P.2d 67 (1967).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 159

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

b. Grounds

(3) Arrest and Imprisonment of Defendant; Surrender to Authorities of Another Jurisdiction

§ 159. Arrest and surrender of principal to authorities in another jurisdiction as ground for setting aside bail forfeiture

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

Generally speaking, the arrest of the principal and his or her surrender to authorities of another jurisdiction are ground for relieving the bail from his or her liability for failing to procure the appearance of the principal in accordance with the conditions of the bond.[1]

Footnotes

1 State v. Wynne, 356 Mo. 1095, 204 S.W.2d 927 (1947); State v. Liakas, 165 Neb. 503, 86 N.W.2d 373 (1957); State v. Pelley, 222 N.C. 684, 24 S.E.2d 635 (1943).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 160

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

b. Grounds

(3) Arrest and Imprisonment of Defendant; Surrender to Authorities of Another Jurisdiction

§ 160. Arrest and confinement in, or extradition to, another jurisdiction as ground for setting aside bail forfeiture

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

A.L.R. Library

Bail: effect on surety's liability under bail bond of principal's incarceration in other jurisdiction, 33 A.L.R.4th 663

Some authorities hold that a surety on a bail bond is not entitled to relief from the forfeiture of the bond based on the fact that the defendant was incarcerated in another jurisdiction at the time he or she was required to appear in court.[1] Furthermore, a defendant's departure from the state without leave of the court while on bail pending appeal, and his subsequent incarceration in another state, have not been considered sufficient to excuse his failure to appear, even though the defendant offered to return to the state without extradition after forfeiture and, as a result of the bonds officer's due diligence, the defendant subsequently returned to the state.[2] Relief has also been denied where the sureties could have avoided the penalty of the bond, as by giving bail to obtain the defendant's release in the other state, but refused to do so.[3]

Observation:

Among the reasons courts have set forth for denying relief to sureties in such circumstances are that the sureties were at fault for permitting the accused to go into another jurisdiction instead of keeping him or her under their control.[4]

On the other hand, however, in some jurisdictions, a bond surety is relieved from its bond obligations when a defendant cannot be surrendered by the surety because the defendant has been subsequently incarcerated in a foreign jurisdiction, and is still incarcerated when the surety's motion to set aside the forfeiture judgment is filed.[5] Thus, a defendant's detention in custody of Immigration and Naturalization Services has been considered good cause for the defendant's failure to appear in state proceedings on drug charges.[6] However, transfer to federal custody followed by deportation does not by itself excuse nonappearance of the defendant, for the purposes of a bond forfeiture proceeding.[7] Moreover, defendants' arrest and detention by federal authorities in another jurisdiction was not a "satisfactory excuse" which suspended the surety's responsibility except for actual costs incurred in returning the defendants to the state, since the defendants could not avail themselves of their own wrong to escape the accounting with the state, nor could the surety avail itself of an excuse not available to the defendants.[8]

Statutes have sometimes provided that a bonds officer may petition for a stay and remission of forfeiture, where there is proof of the defendant's incarceration within another jurisdiction, subject to a "hold order" for his or her return.[9] Also, it has been held that when a principal, incarcerated in another state, has indicated his or her willingness to be extradited and to plead to the offense for which he or she was bailed, it is not an abuse of discretion for the trial court to set aside an order of forfeiture of bond when the district attorney's office refuses to cooperate.[10]

The effect of a defendant's incarceration in another jurisdiction on a bail bond surety's liability is, in some jurisdictions, a matter within the trial court's discretion, with the grant or denial of relief depending on the particular circumstances of the case.[11] Even so, relief has generally been denied where the defendant was at large on the date of the default and was arrested in another state after the default and forfeiture of the bond.[12]

A foreign country's refusal to extradite a defendant despite an existing treaty of extradition does not entitle a bail bond surety to a remission of forfeiture of a bond it posted for the defendant.[13]

The view has been followed that the surety should be released from liability when estreatment is ordered for nonappearance after the defendant has been extradited, since, when extradition is accomplished, the surety is no longer able to perform his or her obligation under the contract to deliver the defendant to the court.[14]

Footnotes

1 ABC Bonding Co. v. State, 641 So. 2d 805 (Ala. Civ. App. 1994); State v. McGurk, 163 N.H. 584, 44 A.3d 568 (2012); State v. Fields, 137 N.J. Super. 76, 347 A.2d 810 (App. Div. 1975); State v. Gonzalez-Fernandez, 170 N.C. App. 45, 612 S.E.2d 148 (2005).

2 State v. Davidson, 1975 OK CIV APP 50, 544 P.2d 1292 (Ct. App. Div. 2 1975).

3 Bowling v. State, 229 Ark. 441, 316 S.W.2d 343 (1958).

4 State v. Hammond, 426 S.W.2d 84 (Mo. 1968); Wallace v. State, 193 Tenn. 182, 245 S.W.2d 192, 29 A.L.R.2d 941 (1952).

5 State v. Diaz, 128 Haw. 215, 286 P.3d 824 (2012); State v. Dennis, 198 So. 3d 272 (La. Ct. App. 4th Cir. 2016); State v. Mottolese, 199 Vt. 470, 2015 VT 81, 124 A.3d 809 (2015).

A surety presented a meritorious defense, as would support granting a surety relief from a judgment that resulted in a forfeiture of bail due to the criminal defendant's failure to appear for a court appearance; the surety alleged that the defendant's incarceration in another county made his appearance legally impossible. State v. Yount, 175 Ohio App. 3d 733, 2008-Ohio-1155, 889 N.E.2d 162 (2d Dist. Montgomery County 2008).

6 State v. Bail Bonds USA, 223 Ariz. 394, 224 P.3d 210 (Ct. App. Div. 1 2010).

7 State v. Bail Bonds USA, 223 Ariz. 394, 224 P.3d 210 (Ct. App. Div. 1 2010).

8 State v. Seybert, 229 Mont. 183, 745 P.2d 687 (1987).

9 Sides v. State, 519 So. 2d 1222 (Miss. 1988).

10 State v. Holt, 1976 OK 157, 556 P.2d 270 (Okla. 1976).

11 State v. Two Jinn, Inc., 150 Idaho 264, 245 P.3d 1016 (Ct. App. 2010); State v. Sellers, 258 N.W.2d 292 (Iowa 1977); State v. Allied Fidelity Corp., 62 Md. App. 291, 489 A.2d 61 (1985); State v. Amador, 1982-NMSC-083, 98 N.M. 270, 648 P.2d 309, 33 A.L.R.4th 656 (1982).

12 State v. Stotts, 1981 OK CIV APP 77, 642 P.2d 618 (Ct. App. Div. 2 1981); Wallace v. State, 196 Tenn. 577, 269 S.W.2d 780 (1954); State v. Nelson, 20 Utah 2d 229, 436 P.2d 792 (1968).

13 Curlycan Bail Bonds, Inc. v. State, 933 So. 2d 122 (Fla. 3d DCA 2006) (a surety's inability to perform its obligation to guarantee the presence of a defendant was caused by a combination of the defendant's action in fleeing to Venezuela and the surety's failure to take precautionary action to prevent the defendant's leaving, not by an act of God or an act of the state).

14 State v. Boatwright, 310 S.C. 281, 423 S.E.2d 139 (1992).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 161

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

b. Grounds

(3) Arrest and Imprisonment of Defendant; Surrender to Authorities of Another Jurisdiction

§ 161. Arrest and confinement in, or extradition to, another jurisdiction as ground for setting aside bail forfeiture—Effect of refusal of obligee's officials to aid in or seek extradition of principal

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 23, 79(1)

A.L.R. Library

Bail: effect on surety's liability under bail bond of principal's incarceration in other jurisdiction, 33 A.L.R.4th 663

Where state officers have no duty to request extradition where the principal is imprisoned for a crime in another state, their refusal to aid in extraditing the fugitive principal is not an interference with or an obstacle to the performance of the obligation of the sureties as provided in the bond, and does not constitute a defense to enforcing the sureties' liability.[1] Alternatively, as sometimes stated, the state's failure to seek extradition of defendants incarcerated in another state does not excuse the surety's liability.[2] Similarly, where a defendant who fails to appear in court has fled to a foreign country, the fact that the surety is unable to convince the authorities in the foreign country to arrest the defendant or the authorities in the United States to extradite him, does not constitute a successful defense to forfeiture of the bail bonds posted on the defendant's behalf.[3]

Footnotes

1 State v. Honey, 165 Neb. 494, 86 N.W.2d 187 (1957).

2 State v. Seybert, 229 Mont. 183, 745 P.2d 687 (1987).

3 Singh Bail Bonds v. Brock, 88 So. 3d 960 (Fla. 2d DCA 2011).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 162

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

c. Practice and Procedure

§ 162. Practice and procedure for vacation of bail forfeiture, generally; motion and application; time requirements

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 79(2)

Forms

Forms relating to vacation of forefeiture, generally, see Am. Jur. Pleading and Practice Forms, Bail and Recognizance [Westlaw®(r) Search Query]

Statutes in some states provide an opportunity for obligors on a bail bond to seek to have the forfeiture of such bond set aside by motion made before or after entry of a judgment of default.[1] It is proper practice, where relief from the obligations of a bail bond is desired, to make application to the court for the discharge or remission of the penalty or for vacation of the order of forfeiture, by motion in the original cause.[2]

For sureties on a bail bond or recognizance to be relieved from forfeiture for the default of the principal, a timely application must be made.[3] The law of some states has allowed the setting aside of a judgment of bond forfeiture only within a specified time.[4] Under state rules in other jurisdictions, no time requirements are set for bringing an action to set aside the forfeiture or

to remit any or all of the judgment, although certain statutes of limitation may apply.[5] In some jurisdictions, a surety is not precluded from seeking remission of a bond after the forfeiture judgment has been paid.[6]

Observation:

A motion to set aside a forfeiture of a bail bond is a statutory proceeding addressed to the trial court that entered the forfeiture.[7]

CUMULATIVE SUPPLEMENT

Cases:

Bondsman was not entitled to relief from judgment of bond forfeiture arising from defendant's failure to appear at trial due to defendant's incarceration in another jurisdiction, where bondsman moved to set aside bond forfeiture one day after expiration of limitations period, and unsigned, unsworn letter of incarceration from records clerk from prison facility was not an affidavit sufficient to prove defendant's inability to appear at scheduled court proceeding. La. Code Crim. Proc. Ann. art. 349.9. State v. Magee, 282 So. 3d 271 (La. Ct. App. 4th Cir. 2019).

[END OF SUPPLEMENT]

Footnotes

1 State v. Krage, 404 N.W.2d 524 (S.D. 1987).
A bail bond company's motion for exoneration of a bail bond adequately identified the requested relief and invoked the trial court's authority under a criminal rule providing that the court which has forfeited bail before remittance of forfeiture may direct that the forfeiture be set aside, upon such condition as the court may impose, if it appears that justice does not require enforcement of the forfeiture; the motion to exonerate bail inherently encompassed a request that the court go through the appropriate steps of setting aside forfeiture, followed by exoneration. State v. Quick Release Bail Bonds, 144 Idaho 651, 167 P.3d 788 (Ct. App. 2007).

2 State v. Wright, 1943 OK 356, 193 Okla. 383, 143 P.2d 801 (1943).
A surety's request for remittitur of bail bond after forfeiture, which was included in its trial brief after a final hearing but before judgment was entered in a forfeiture proceeding, constituted a written motion for remittitur as required by the governing statute, although the better practice would have been to request remittitur in a separate motion. Safety Nat. Cas. Corp. v. State, 225 S.W.3d 684 (Tex. App. El Paso 2006), decision rev'd on other grounds, 273 S.W.3d 157 (Tex. Crim. App. 2008).

3 Application of Shetsky, 239 Minn. 463, 60 N.W.2d 40 (1953).
A bail bond company's motions requesting exoneration of a bail bond at a point before "remittance of the forfeiture" were timely; no independent action was ever initiated by the prosecutor, and, by stipulation, the bail bond amount had not yet been paid and would not be paid until the appeal had been decided. State v. Quick Release Bail Bonds, 144 Idaho 651, 167 P.3d 788 (Ct. App. 2007).

4 State v. Vaimili, 131 Haw. 9, 313 P.3d 698 (2013), as corrected, (Oct. 30, 2013) (30 days from receipt of notice); State v. Washington, 79 So. 3d 333 (La. Ct. App. 5th Cir. 2010), as corrected on reh'g, (Feb. 7, 2011) (60 days from the mailing of the notice of bond forfeiture); State v. Williams, 218 N.C. App. 450, 725 S.E.2d 7 (2012); State v. Tate, 2012 OK 31, 276 P.3d 1017 (Okla. 2012).
One-year statute of limitations on applications for remission of bail did not violate due process, since bail remission was limited statutorily created right. Matter of EBIC Insurance Company, Surety, By Eatman, 59 Misc. 3d 357, 68 N.Y.S.3d 841 (Sup 2017).

5 State v. Krage, 404 N.W.2d 524 (S.D. 1987).

6 State v. McKay, 2017-Ohio-7918, 98 N.E.3d 966 (Ohio Ct. App. 9th Dist. Lorain County 2017).

7 State v. Krage, 404 N.W.2d 524 (S.D. 1987).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 163

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

c. Practice and Procedure

§ 163. Hearing on vacation of bail forfeiture; evidence; proof

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 79(2)

A hearing is necessary on a bail bondsman's request for remission of bail forfeitures so that the court may have before it evidence of the extent of the bondsman's participation in the return of the defendants and any other relevant evidence the bondsman may produce which may properly guide the trial court in its future decision as to whether to return any portion of the forfeited bonds involved.[1] A hearing is unnecessary if no relevant information is presented to the trial court which justifies holding such a hearing.[2]

In some jurisdictions, a physical appearance by the defendant is required to set aside a judgment of bond forfeiture resulting from the absence of the defendant from his trial.[3]

In federal court, persons securing an appearance bond have the right to an evidentiary hearing if they can demonstrate any rational basis for remission of an appearance bond forfeiture judgment; the determination of whether or not to allow an evidentiary hearing is within the broad discretionary powers of the district court.[4]

The burden of establishing grounds to set aside a bail forfeiture[5] or for remission[6] or remittitur of bail is generally on the party challenging the forfeiture.[7] Some statutes require the proof presented by a bail agent or surety to show why a defendant was prevented from appearing on the date of the hearing, not why the defendant was prevented from appearing at some later point in time.[8]

Footnotes

1 Com. v. Hernandez, 2005 PA Super 336, 886 A.2d 231 (2005); State v. Anderson, 204 Vt. 17, 2016 VT 127, 162 A.3d 1249 (2016).
After the entry of a judgment of bond forfeiture based on a defendant's failure to appear, the trial court was required to hold a hearing on the surety's request for exoneration of bond after the defendant was rearrested, under a criminal rule governing the remission of the bond, even though the surety did not specifically request "remission," where the surety's affidavit alleged that her company had spent "hundreds of hours and thousands of dollars" on research, the hiring of outside sources, and surveillance work to locate [defendant], and that, after locating him, her company immediately contacted [state troopers] to assist in [defendant's] arrest. Gomez v. State, 172 P.3d 824 (Alaska Ct. App. 2007).

2 Indiana Lumbermen's Mut. Ins. Co. v. U.S., 640 A.2d 1036 (D.C. 1994).

3 State v. Mosk, 257 So. 3d 206 (La. Ct. App. 4th Cir. 2018).

4 U.S. v. Diaz, 811 F.2d 1412 (11th Cir. 1987).

5 U.S. v. Torres, 807 F.3d 257 (7th Cir. 2015); Big Louie Bail Bonds, LLC v. State, 435 Md. 398, 78 A.3d 387 (2013); State v. Ventura, 196 N.J. 203, 952 A.2d 1049 (2008); State v. Anderson, 2011 OK CIV APP 13, 247 P.3d 294 (Div. 3 2010); State v. Krage, 404 N.W.2d 524 (S.D. 1987).
The surety bears the burden of establishing grounds for discretionary relief from the forfeiture of bail judgment. People v. Diaz-Garcia, 159 P.3d 679 (Colo. App. 2006).

6 U.S. v. Gambino, 17 F.3d 572 (2d Cir. 1994); Com. v. Gaines, 2013 PA Super 208, 74 A.3d 1047 (2013).

7 McKenna v. State, 247 S.W.3d 716 (Tex. Crim. App. 2008).

8 Gaeta v. State, 953 N.E.2d 1212 (Ind. Ct. App. 2011).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 164

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

c. Practice and Procedure

§ 164. Factors to be considered by court in determination on remission of forfeited bail

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 79(2)

The decision to remit forfeited bail is fact-driven and involves the consideration of a multitude of factors.[1] In making its decision on a surety's request for remittitur of a forfeited bail bond, the court may consider any factor bearing upon the equity of the situation, including, but not necessarily limited to, the following:

(1) whether the accused's failure to appear in court was willful;[2]

(2) whether the delay caused by the accused's failure to appear in court prejudiced the government or harmed the public interest;[3]

(3) whether the surety participated in the rearrest of the accused;[4]

(4) whether the government incurred costs or suffered inconvenience in the rearrest of the accused;[5]

(5) whether the surety received compensation for the risk of executing the bail bond[6] or is a commercial bondsman;[7]

(6) the appropriateness of the amount of the bond;[8]

(7) whether the surety will suffer extreme hardship in the absence of a remittitur;[9]

(8) the diligence of sureties in staying abreast of the defendant's whereabouts prior to the date of appearance and in searching for the defendant;[10]

(9) the public interest in ensuring a defendant's appearance;[11]

(10) the time elapsed between the date ordered for the appearance of defendant and his or her return to court;[12]

(11) the amount of delay caused, and the stage of the proceedings;[13]

(12) the relation between the amount forfeited and the probable costs and burdens to the government to regain custody;[14] and

(13) any mitigating factors.[15]

No single factor alone is determinative in a proceeding to vacate a bail bond forfeiture, and the relative importance of each factor is for the trial judge to determine inasmuch as it may vary from case to case;[16] no clear rule can be set down that will guide the trial court in every instance because the court must consider the totality of the facts and circumstances in each individual case.[17]

Footnotes

1 State v. Ventura, 196 N.J. 203, 952 A.2d 1049 (2008).

2 United States v. Brooks, 872 F.3d 78 (2d Cir. 2017), cert. denied, 139 S. Ct. 171, 202 L. Ed. 2d 37 (2018); United States v. Vickers, 144 F. Supp. 3d 1146 (E.D. Cal. 2015); People v. Diaz-Garcia, 159 P.3d 679 (Colo. App. 2006); State v. Two Jinn, Inc., 150 Idaho 264, 245 P.3d 1016 (Ct. App. 2010); State v. Askland, 784 N.W.2d 60 (Minn. 2010); State v. Mitchell, 421 S.C. 365, 807 S.E.2d 193 (2017); McKenna v. State, 247 S.W.3d 716 (Tex. Crim. App. 2008); Bonds v. Albany County, 2018 WY 38, 415 P.3d 651 (Wyo. 2018).

3 People v. Diaz-Garcia, 159 P.3d 679 (Colo. App. 2006); State v. Quick Release Bail Bonds, 144 Idaho 651, 167 P.3d 788 (Ct. App. 2007); State v. Askland, 784 N.W.2d 60 (Minn. 2010) (prejudice to State in prosecuting defendant); State v. Ramirez, 378 N.J. Super. 355, 875 A.2d 1025 (App. Div. 2005); State v. Mitchell, 421 S.C. 365, 807 S.E.2d 193 (2017); McKenna v. State, 247 S.W.3d 716 (Tex. Crim. App. 2008).

4 United States v. Brooks, 872 F.3d 78 (2d Cir. 2017), cert. denied, 139 S. Ct. 171, 202 L. Ed. 2d 37 (2018); United States v. Vickers, 144 F. Supp. 3d 1146 (E.D. Cal. 2015); People v. Diaz-Garcia, 159 P.3d 679 (Colo. App. 2006); State v. Wharton, 162 Idaho 666, 402 P.3d 1119 (Ct. App. 2017); State v. Askland, 784 N.W.2d 60 (Minn. 2010); State v. Ramirez, 378 N.J. Super. 355, 875 A.2d 1025 (App. Div. 2005); State v. Torres, 2004 OK 12, 87 P.3d 572 (Okla. 2004); McKenna v. State, 247 S.W.3d 716 (Tex. Crim. App. 2008); Bonds v. Albany County, 2018 WY 38, 415 P.3d 651 (Wyo. 2018).

5 United States v. Brooks, 872 F.3d 78 (2d Cir. 2017), cert. denied, 139 S. Ct. 171, 202 L. Ed. 2d 37 (2018); United States v. Vickers, 144 F. Supp. 3d 1146 (E.D. Cal. 2015); People v. Diaz-Garcia, 159 P.3d 679 (Colo. App. 2006); State v. Two Jinn, Inc., 150 Idaho 264, 245 P.3d 1016 (Ct. App. 2010); State v. Ramirez, 378 N.J. Super. 355, 875 A.2d 1025 (App. Div. 2005); State v. Escobar, 187 N.C. App. 267, 652 S.E.2d 694 (2007); McKenna v. State, 247 S.W.3d 716 (Tex. Crim. App. 2008); Bonds v. Albany County, 2018 WY 38, 415 P.3d 651 (Wyo. 2018).

6 McKenna v. State, 247 S.W.3d 716 (Tex. Crim. App. 2008).

7 United States v. Brooks, 872 F.3d 78 (2d Cir. 2017), cert. denied, 139 S. Ct. 171, 202 L. Ed. 2d 37 (2018) (whether surety is professional or friend or family member); United States v. Vickers, 144 F. Supp. 3d 1146 (E.D. Cal. 2015) (whether surety is professional or friend or family member); State v. Ramirez, 378 N.J. Super. 355, 875 A.2d 1025 (App. Div. 2005).

8 United States v. Vickers, 144 F. Supp. 3d 1146 (E.D. Cal. 2015).
In considering the relevant factors on a motion for remission of forfeited bail, under the factor of the amount of the posted bail, courts must consider whether the amount forfeited appropriately compensates the injury

to the state, and whether the amount remitted is so unreasonably small as to discourage future posting of bonds. State v. Mungia, 446 N.J. Super. 318, 141 A.3d 395 (App. Div. 2016)

9 McKenna v. State, 247 S.W.3d 716 (Tex. Crim. App. 2008).

10 State v. Ramirez, 378 N.J. Super. 355, 875 A.2d 1025 (App. Div. 2005); State v. Escobar, 187 N.C. App. 267, 652 S.E.2d 694 (2007).

11 People v. Escalera, 121 P.3d 306 (Colo. App. 2005); State v. Two Jinn, Inc., 150 Idaho 264, 245 P.3d 1016 (Ct. App. 2010); State v. Torres, 2004 OK 12, 87 P.3d 572 (Okla. 2004); Bonds v. Albany County, 2018 WY 38, 415 P.3d 651 (Wyo. 2018).

12 State v. Ramirez, 378 N.J. Super. 355, 875 A.2d 1025 (App. Div. 2005).

13 Bonds v. Albany County, 2018 WY 38, 415 P.3d 651 (Wyo. 2018).

14 Bonds v. Albany County, 2018 WY 38, 415 P.3d 651 (Wyo. 2018).

15 United States v. Brooks, 872 F.3d 78 (2d Cir. 2017), cert. denied, 139 S. Ct. 171, 202 L. Ed. 2d 37 (2018); United States v. Vickers, 144 F. Supp. 3d 1146 (E.D. Cal. 2015); In re Bond Forfeiture in Pima County Cause Number CR-20031154, 208 Ariz. 368, 93 P.3d 1084 (Ct. App. Div. 2 2004); People v. Diaz-Garcia, 159 P.3d 679 (Colo. App. 2006); State v. Two Jinn, Inc., 150 Idaho 264, 245 P.3d 1016 (Ct. App. 2010); Bonds v. Albany County, 2018 WY 38, 415 P.3d 651 (Wyo. 2018).

16 State v. Torres, 2004 OK 12, 87 P.3d 572 (Okla. 2004).

17 People v. Escalera, 121 P.3d 306 (Colo. App. 2005).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 165

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

C. Forfeiture of Bail or Cash Deposit in Lieu of Bail

2. Relief from Forfeiture

c. Practice and Procedure

§ 165. Terms of relief on vacation of bail forfeiture; cancellation of bond

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 79(2)

Relief to sureties from forfeiture of a bail bond may be conditioned on the payment of costs.[1]

Statutes in some jurisdictions provide that within a specified number of days after the forfeiture of a bond has been discharged or remitted, the court must order the bond canceled and, if the surety has attached a certificate of cancellation to the original bond, must furnish an executed certificate of cancellation to the surety without cost.[2]

In federal court, if a defendant is acquitted after bail bond forfeiture or his conviction is vacated, a district court is not required to return the forfeited bail bond.[3]

Footnotes

1 Allison v. People, 132 Colo. 156, 286 P.2d 1102 (1955); State v. Wynne, 356 Mo. 1095, 204 S.W.2d 927 (1947); State v. Wright, 1943 OK 356, 193 Okla. 383, 143 P.2d 801 (1943).

2 Polakoff Bail Bonds v. Orange County, 634 So. 2d 1083 (Fla. 1994).

3 United States v. Brooks, 872 F.3d 78 (2d Cir. 2017), cert. denied, 139 S. Ct. 171, 202 L. Ed. 2d 37 (2018).

End of Document

8A Am. Jur. 2d Bail and Recognizance IX D Refs.

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

D. Criminal Liability

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bail 97(1) to 97(5)

A.L.R. Library

A.L.R. Index, Bail and Recognizance
A.L.R. Index, Federal Bail Reform Act
West's A.L.R. Digest, Bail 97(1) to 97(5)

End of Document

8A Am. Jur. 2d Bail and Recognizance § 166

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

D. Criminal Liability

1. Liability Under State Law

§ 166. Criminal violation of bail under state law, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 97(1) to 97(2.1)

A.L.R. Library

State statutes making default on bail a separate criminal offense, 63 A.L.R.4th 1064

In some states, by statute, violation of a bail bond is a separate criminal offense,[1] or if the behavior resulting in a violation of a condition of bail is criminal, the accused may be charged separately for that conduct,[2] or, if a person released on bail fails to appear before a court or judicial officer as required, he or she is guilty of a separate offense.[3] In this regard, state statutes have sometimes provided that if a person released on bail willfully fails to appear before a court or judicial officer, he or she is guilty of a felony or misdemeanor, depending on the circumstances of the release and the offense involved.[4] The crime of aggravated failure to appear has been defined by statute in some states as willfully incurring a forfeiture of an appearance bond and failing to surrender oneself within a specified number of days following the date of such forfeiture by one who is charged with a felony and has been released on bond for appearance before any court of the state.[5]

Observation:

Bail-jumping laws are intended not only to deter bail-jumping[6] and to protect the integrity of the bail bond system,[7] but also to enhance the effective administration of justice in the courts.[8]

Under the Model Penal Code, a person set at liberty by court order, with or without bail, upon condition that he or she will subsequently appear at a specified time and place, commits a misdemeanor if, without lawful excuse, he or she fails to appear at that time and place.[9] The offense constitutes a felony of the third degree where the required appearance was to answer to a charge of felony, or for disposition of any such charge, and the actor took flight or went into hiding to avoid apprehension, trial or punishment.[10]

Practice Tip:

An information charging a defendant with bail-jumping adequately notifies defendant of the essential elements of the crime, notwithstanding that the information does not state the penalty classification of the underlying charge; the class of the underlying crime being charged merely establishes the penalty that could be imposed following a bail-jumping conviction, and it is not an essential element of the crime.[11]

CUMULATIVE SUPPLEMENT

Cases:

Prosecution of defendant for two offenses of bail jumping, based on his failure to appear in accordance with two separate bonds, as to two separate offenses, burglary of a habitation and evading arrest with a vehicle, did not violate double jeopardy protections; each bail bond was a separate promise by defendant to appear in court to answer that particular charge, and defendant's failure to appear constituted a separate violation of each bail bond. U.S. Const. Amend. 5; Tex. Const. art. 1, § 14; Tex. Penal Code Ann. § 38.10. Figueredo v. State, 572 S.W.3d 738 (Tex. App. Amarillo 2019).

[END OF SUPPLEMENT]

Footnotes

1 People v. Lynn, 89 Ill. App. 3d 712, 44 Ill. Dec. 939, 412 N.E.2d 15 (2d Dist. 1980).

2 State v. Sauve, 159 Vt. 566, 621 A.2d 1296 (1993).

3 Adkerson v. State, 731 P.2d 1218 (Alaska 1987); State v. Candito, 4 Conn. App. 154, 493 A.2d 250 (1985); Abdul-Musawwir v. State, 483 N.E.2d 464 (Ind. Ct. App. 1985); Foster v. State, 372 N.W.2d 468 (S.D. 1985).

4 Adkerson v. State, 731 P.2d 1218 (Alaska 1987) (statute making willful failure to appear (1) in connection with a charge of felony, or while awaiting sentence or pending appeal after conviction of an offense, a felony; (2) in connection with a charge of misdemeanor, a misdemeanor; and (3) for appearance as a material witness, a misdemeanor).

A state statute provided that a person who had been legally released and who willfully failed to appear before any court as required would be guilty of an offense. State v. Young, 636 S.W.2d 684 (Mo. Ct. App. E.D. 1982).

Intent or willfulness as an element of proof, see §§ 169, 170.

5 State v. Chappell, 11 Kan. App. 2d 546, 729 P.2d 1241 (1986).

6 State v. Henning, 2004 WI 89, 273 Wis. 2d 352, 681 N.W.2d 871 (2004).

7 State v. Khadijah, 98 Conn. App. 409, 909 A.2d 65 (2006).

8 State v. Henning, 2004 WI 89, 273 Wis. 2d 352, 681 N.W.2d 871 (2004).

9 Model Penal Code § 242.8.

10 Model Penal Code § 242.8 (this does not apply to obligations to appear incident to release under suspended sentence or on probation or parole).

11 State v. Williams, 133 Wash. App. 714, 136 P.3d 792 (Div. 1 2006), aff'd, 162 Wash. 2d 177, 170 P.3d 30 (2007).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 167

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

D. Criminal Liability

1. Liability Under State Law

§ 167. Validity of statutes defining state bail offenses

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 97(2), 97(2.1)

A.L.R. Library

State statutes making default on bail a separate criminal offense, 63 A.L.R.4th 1064

The validity of state criminal statutes making failure to appear a criminal offense has generally been upheld, despite various claims that such statutes were unconstitutionally vague[1] or overbroad, or violated constitutional provisions regarding equal protection and due process or double jeopardy.[2] However, a statute which provided that a person would be guilty of bail-jumping if he or she failed without lawful excuse to appear as required, after having been released by court order or admitted to bail on the condition that he or she subsequently appear before the court, has been held unconstitutionally vague where the statute did not define the term "without lawful excuse" and stated that the lack of such excuse would be inferred unless it was otherwise established, since the statute failed to provide guidelines as to the meaning of "lawful excuse," and predicting its potential application would be a guess, at best[3] although there is authority holding that similar terms are not unconstitutionally vague.[4] Where a defendant was convicted of multiple counts of bail-jumping after he failed to appear for a scheduled hearing involving multiple charges, it was held that the defendant's right to protection against double jeopardy was violated.[5] However, a defendant was subject to a conviction for bail-jumping, even though all underlying charges were dismissed, since the court had jurisdiction to order the defendant to appear and answer for those charges notwithstanding the defendant's double jeopardy defense.[6]

Footnotes

1 People v. Garcia, 698 P.2d 801, 63 A.L.R.4th 1051 (Colo. 1985); State v. Emmons, 397 N.J. Super. 112, 936 A.2d 459 (App. Div. 2007) (the basic prohibition of the statute was perfectly clear and no person of ordinary intelligence would have any difficulty knowing what was prohibited); State v. Aranda, 94 N.M. 784, 1980-NMCA-130, 617 P.2d 173 (Ct. App. 1980).

2 People v. Garcia, 698 P.2d 801, 63 A.L.R.4th 1051 (Colo. 1985).

3 State v. Hilt, 99 Wash. 2d 452, 662 P.2d 52 (1983).

4 Com. v. Love, 26 Mass. App. Ct. 541, 530 N.E.2d 176 (1988) (rejecting the contention that a similar statute criminalizing failure to appear "without sufficient excuse" was unconstitutionally vague by reason of the quoted phrase).

5 McGee v. State, 438 So. 2d 127 (Fla. 1st DCA 1983) (holding that the defendant did not commit separate offenses by failing to appear on one date when seven cases were pending, but committed only one offense involving a single event, and that the multiple convictions and sentences violated the defendant's right to protection against double jeopardy).

6 State v. Downing, 122 Wash. App. 185, 93 P.3d 900 (Div. 2 2004).
Necessity of underlying charge as element of offense, generally, see § 168.

End of Document

8A Am. Jur. 2d Bail and Recognizance § 168

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

D. Criminal Liability

1. Liability Under State Law

§ 168. Elements of proof of violation of bail, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 97(2), 97(2.1)

A.L.R. Library

State statutes making default on bail a separate criminal offense, 63 A.L.R.4th 1064

Under some statutes, the elements of bail-jumping are satisfied if the defendant (1) was held for, charged with, or convicted of a particular crime; (2) had knowledge of the requirement of subsequent personal appearance; and (3) failed to appear as required.[1] It has also been held that to convict a person under the failure to appear section of a bail reform statute, the trier of fact must find (1) that the defendant was released pending trial or sentencing, (2) that he or she was required to appear in court on a specified date or at a specified time, (3) that he or she failed to appear, and (4) that his or her failure was willful.[2] There can be no condition to subsequently appear for a hearing if there is no notice to the defendant of the required appearance.[3] In order to meet the knowledge of hearing requirement in a bail-jumping statute, the state is required to prove that a defendant has been given notice of the required court dates.[4] Without more, proof of notice to an attorney of a court proceeding is insufficient to make the client criminally liable for failing to attend.[5] However, under other authority, if the defendant's attorney had actual notice of the court date, the fact finder may infer from that evidence that the defendant also had actual notice of the court date, because the attorney-client relationship presumes that attorney and client, as servant and master, will communicate about all the important stages of the client's upcoming court proceedings.[6]

In some jurisdictions, in order to convict a defendant of bail-jumping, it is necessary for the state to prove that the defendant failed to surrender him- or herself within a specific time after the date he or she failed to appear and forfeited his or her bond.[7] In addition, there is also some authority that, in bail-jumping prosecutions, the state has the burden of establishing the lack of lawful excuse by proof beyond a reasonable doubt, and it is thus inappropriate for the trial court to resolve the issue by making a legal determination that the defendant's explanation for his or her conduct, even if believed, did not constitute a lawful excuse for his or her failure to appear.[8]

Since the crime of bail-jumping is a criminal offense in and of itself, and, thus is not dependent upon the outcome of the underlying charges,[9] in order to convict the defendant for failure to appear, the view has been followed that it is not necessary for the state to present proof of the underlying charges.[10]

One of the elements of a failure to appear charge is that the court that required the defendant's appearance must be constitutionally legitimate.[11]

Footnotes

1 State v. Servatius, 285 Or. App. 45, 395 P.3d 910 (2017); State v. Boyd, 1 Wash. App. 2d 501, 408 P.3d 362 (Div. 1 2017), review denied, 190 Wash. 2d 1008, 414 P.3d 578 (2018) and cert. denied, 139 S. Ct. 639 (2018).
Probation revocation hearing was a "criminal matter" for purposes of statute criminalizing failure to appear at stage of criminal matter, and thus defendant's failure to appear at such hearing constituted offense of failure to appear, despite argument that probation revocation hearings were civil in nature, where defendant had been released on probation for a felony. State v. Seay, 395 S.W.3d 64 (Mo. Ct. App. W.D. 2013).

2 Wilkins v. U.S., 137 A.3d 975 (D.C. 2016); State v. Goble, 205 N.C. App. 310, 695 S.E.2d 152 (2010).
To convict defendant of bail jumping and failure to appear in court, State was required to prove that she (1) was lawfully released from custody, with or without bail; (2) on condition that she subsequently appear; and (3) intentionally or knowingly failed to appear in accordance with the terms of her release. Ferguson v. State, 506 S.W.3d 113 (Tex. App. Texarkana 2016).
Willfulness, generally, see § 169.

3 State v. Mather, 256 Or. App. 230, 300 P.3d 225 (2013).

4 State v. Cardwell, 155 Wash. App. 41, 226 P.3d 243 (Div. 2 2010), review granted, cause remanded, 172 Wash. 2d 1003, 257 P.3d 1114 (2011).

5 Corrales v. State, 84 So. 3d 406 (Fla. 1st DCA 2012).

6 Chavez v. Commonwealth, 69 Va. App. 149, 817 S.E.2d 330 (2018).

7 People v. Costa, 2013 IL App (1st) 90833, 375 Ill. Dec. 395, 997 N.E.2d 706 (App. Ct. 1st Dist. 2013) (within 30 days after bail forfeited); People v. Branch, 19 Misc. 3d 255, 852 N.Y.S.2d 676 (N.Y. City Crim. Ct. 2007) (failed to appear in court on the required date or voluntarily within 30 days thereafter).

8 State v. Primrose, 32 Wash. App. 1, 645 P.2d 714 (Div. 2 1982).

9 State v. DeAtley, 11 Kan. App. 2d 605, 731 P.2d 318 (1987).

10 Small v. State, 692 S.W.2d 536 (Tex. App. Dallas 1985), petition for discretionary review refused, (Mar. 19, 1986); State v. Downing, 122 Wash. App. 185, 93 P.3d 900 (Div. 2 2004) (the charge underlying an allegation of bail-jumping need not be valid to support a bail-jumping conviction).
A defendant who had been convicted of driving while intoxicated (DWI) and possession of marijuana and was awaiting sentencing was “charged” with an offense within the meaning of the failure to appear statute, and thus the defendant could be convicted of failure to appear under the statute after he did not appear for sentencing. Bowling v. Commonwealth, 51 Va. App. 102, 654 S.E.2d 354 (2007).

11 West Jordan City v. Goodman, 2006 UT 27, 135 P.3d 874 (Utah 2006).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 169

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

D. Criminal Liability

1. Liability Under State Law

§ 169. Intent, willfulness, knowledge, or purposefulness, as element of proof of bail violation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 97(2), 97(2.1)

A.L.R. Library

State statutes making default on bail a separate criminal offense, 63 A.L.R.4th 1064

Statutes making criminal a released defendant's violation of a bail bond,[1] failure to appear,[2] bail-jumping,[3] aggravated failure to appear,[4] have sometimes conditioned criminal liability for such offenses on a showing of the willfulness of the defendant's conduct,[5] on the defendant's intent not to appear,[6] or on the defendant's knowingly[7] or purposely failing to appear.[8] Where the prosecution proves that a defendant received timely notice of when and where to appear for trial and thereafter does not appear on the date or at the place specified, the fact finder may infer that the failure to appear was willful.[9]

Definition:

The word "willful" within the meaning of a statute penalizing a defendant's willful failure to appear, means doing a forbidden act purposefully in violation of the law—it means that the defendant acted intentionally in the sense that his or her conduct was voluntary and not inadvertent.[10] To be "willful," a defendant's failure to appear in court must be knowing, intentional, and deliberate,

rather than inadvertent or accidental.[11] However, the correct application of "willfully" in a particular case will generally depend upon the character of the act involved and the attending circumstances.[12]

However, under some bail-jumping statutes, proof of a culpable mental state is not necessary;[13] a defendant's culpable mental state is immaterial.[14] In this regard, in some jurisdictions, a statute providing that any person who, having been released on bail, fails to appear before any court as required would be guilty of the offense of failure to appear, has been interpreted not to require intent as a material element, and as being a strict liability crime.[15]

Footnotes

1 People v. Lynn, 89 Ill. App. 3d 712, 44 Ill. Dec. 939, 412 N.E.2d 15 (2d Dist. 1980).

2 Adkerson v. State, 731 P.2d 1218 (Alaska 1987); State v. Pauling, 102 Conn. App. 556, 925 A.2d 1200 (2007); Corrales v. State, 84 So. 3d 406 (Fla. 1st DCA 2012); Abdul-Musawwir v. State, 483 N.E.2d 464 (Ind. Ct. App. 1985); State v. Granado, 141 N.M. 575, 2007-NMCA-058, 158 P.3d 1018 (Ct. App. 2007); Chavez v. Commonwealth, 69 Va. App. 149, 817 S.E.2d 330 (2018).

3 State v. Blackbird, 187 Mont. 270, 609 P.2d 708 (1980).

4 State v. Chappell, 11 Kan. App. 2d 546, 729 P.2d 1241 (1986).

5 Adkerson v. State, 731 P.2d 1218 (Alaska 1987); State v. Candito, 4 Conn. App. 154, 493 A.2d 250 (1985); State v. Chappell, 11 Kan. App. 2d 546, 729 P.2d 1241 (1986); Chavez v. Commonwealth, 69 Va. App. 149, 817 S.E.2d 330 (2018).

6 Abdul-Musawwir v. State, 483 N.E.2d 464 (Ind. Ct. App. 1985); State v. Franklin, 126 So. 3d 663 (La. Ct. App. 4th Cir. 2013).
The intentional failure to appear is a necessary element of proof of the offense of bail-jumping. Malicoat v. Com., 637 S.W.2d 640 (Ky. 1982).

7 Ferguson v. State, 506 S.W.3d 113 (Tex. App. Texarkana 2016); State v. Hart, 195 Wash. App. 449, 381 P.3d 142 (Div. 2 2016), review denied, 187 Wash. 2d 1011, 388 P.3d 480 (2017).
A state statute provided that a person, who is lawfully released from custody on condition that he subsequently appear, commits a crime if he intentionally or knowingly fails to appear in accordance with the terms of his release. Richardson v. State, 699 S.W.2d 235 (Tex. App. Austin 1985), petition for discretionary review refused, (July 9, 1986) and petition for discretionary review refused, (Oct. 22, 1986).

8 State v. Blackbird, 187 Mont. 270, 609 P.2d 708 (1980).

9 Chavez v. Commonwealth, 69 Va. App. 149, 817 S.E.2d 330 (2018).

10 State v. Outlaw, 108 Conn. App. 772, 949 A.2d 544 (2008).

11 Wilkins v. U.S., 137 A.3d 975 (D.C. 2016); People v. Costa, 2013 IL App (1st) 90833, 375 Ill. Dec. 395, 997 N.E.2d 706 (App. Ct. 1st Dist. 2013).

12 Chavez v. Commonwealth, 69 Va. App. 149, 817 S.E.2d 330 (2018).

13 People v. Houghtaling, 144 A.D.3d 1591, 40 N.Y.S.3d 815 (4th Dep't 2016), leave to appeal denied, 29 N.Y.3d 949, 54 N.Y.S.3d 380, 76 N.E.3d 1083 (2017).

14 People v. Branch, 19 Misc. 3d 255, 852 N.Y.S.2d 676 (N.Y. City Crim. Ct. 2007).

15 State v. Vogel, 315 N.W.2d 324 (S.D. 1982).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 170

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

D. Criminal Liability

1. Liability Under State Law

§ 170. Intent, willfulness, knowledge, or purposefulness, as element of proof of bail violation—Manner of proof

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 97(3) to 97(5)

A.L.R. Library

State statutes making default on bail a separate criminal offense, 63 A.L.R.4th 1064

In order to prove that a defendant's failure to appear was "wilful," the state must prove beyond a reasonable doubt either that the defendant received and deliberately ignored a notice to appear[1] or that he or she intentionally embarked on a course of conduct designed to prevent him or her from receiving such notice.[2] In some jurisdictions, a prima facie showing that the accused had notice of the proceeding at which he failed to appear because he was free on instanter bond will satisfy the state's burden of proving that the accused intentionally and knowingly failed to appear in accordance with the terms of the release, in the absence of any evidence to the contrary; however, if the accused offers evidence that he did not have notice to appear, the state must produce further evidence sufficient to justify a rational fact finder in finding that the accused had actual notice, or engaged in a course of conduct designed to avoid receiving notice.[3] Stated alternatively, when the government proves that an accused received timely notice of when and where to appear for trial and the accused then fails to appear, the fact finder may infer that the failure to appear was willful.[4] In addition, willfulness can be proven by showing that a defendant purposefully engaged in a course of conduct designed to prevent him from receiving notice to appear; any failure to appear after notice of an appearance date is prima facie evidence that the failure to appear was willful.[5] However, a finding of guilt is improper where the failure

to appear is not willful, based on unrefuted evidence that the defendant was not notified of the day and time he was required to appear.[6] Where the statutory requirement of mens rea for bail jumping provides that the defendant must "knowingly" fail to appear, rather than "willfully" fail to appear, this effectively lowers the state's burden of proof and requires the state to only establish that the defendant was aware that he was required to appear in court on a certain date and at a certain time and that he failed to do so.[7]

Practice Tip:

In a bail-jumping prosecution, the factual question of the defendant's intent is properly left to the jury.[8]

Footnotes

1 State v. Bereis, 114 Conn. App. 554, 970 A.2d 768 (2009); Ferguson v. State, 506 S.W.3d 113 (Tex. App. Texarkana 2016).

2 State v. Outlaw, 108 Conn. App. 772, 949 A.2d 544 (2008).
A court clerk's testimony that cases were usually assigned to a courtroom for the week on Mondays, and that the trial court "probably called" the defendant's bond forfeiture on Monday and "maybe gave [defendant] a couple of days to appear," was insufficient to show that defendant's failure to appear at a Wednesday hearing was willful, as required to support conviction for failure to appear. State v. Lasley, 130 S.W.3d 15 (Mo. Ct. App. E.D. 2004).

3 Ferguson v. State, 506 S.W.3d 113 (Tex. App. Texarkana 2016).

4 Bowling v. Commonwealth, 51 Va. App. 102, 654 S.E.2d 354 (2007).
To prove that a defendant knowingly failed to appear on a criminal citation, the state has the burden to prove that the defendant knew of her obligation to appear on that date. State v. Newcomer, 265 Or. App. 706, 337 P.3d 137 (2014).
The knowledge requirement of bail-jumping statute is met when the state proves that the defendant had been given notice of the required court dates. State v. Fredrick, 123 Wash. App. 347, 97 P.3d 47 (Div. 2 2004).

5 Chavez v. Commonwealth, 69 Va. App. 149, 817 S.E.2d 330 (2018).

6 Lewis v. State, 380 So. 2d 1191 (Fla. 5th DCA 1980).

7 State v. Osborn, 504 S.W.3d 865 (Mo. Ct. App. W.D. 2016).

8 Perkins v. State, 438 So. 2d 873 (Fla. 1st DCA 1983).

8A Am. Jur. 2d Bail and Recognizance § 171

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

D. Criminal Liability

1. Liability Under State Law

§ 171. Defenses to bail violation; matters excusing failure to appear

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 97(3) to 97(5)

A.L.R. Library

State statutes making default on bail a separate criminal offense, 63 A.L.R.4th 1064

Under some statutes, a defendant with a reasonable excuse for his or her failure to appear has a valid defense to a prosecution.[1]

Practice Tip:

In criminal prosecutions for bail-jumping, a defendant has been said to have the burden of establishing that he or she had a reasonable excuse for his or her failure to appear.[2]

Furthermore, in some jurisdictions, intent or willfulness generally being required to show criminal liability, an innocent or excusable failure to surrender is not punishable,[3] a showing that the cause of a defendant's failure to appear was unavoidable and due to circumstances beyond his or her control constitutes a valid affirmative defense.[4] However, that a defendant was intoxicated and confused about the time he or she was required to appear in court in connection with criminal charges does not excuse his or her failure to appear.[5] Furthermore, a jury was entitled to find that a defendant's failure to appear was not due to circumstances beyond his control even though he had been incarcerated in another state at the time of the required appearance[6] although a defendant's inability to appear for a hearing on a misdemeanor charge because he was in federal custody was held an affirmative defense to a bail-jumping charge.[7] Moreover, a defendant's failure to surrender was not willful where he failed to timely appear because he was under arrest on a misdemeanor charge.[8] The claimed illness of the defendant has been rejected as a reasonable excuse for failure to attend where there has been an insufficiency of evidence shown as to the illness, and where the defendant did not notify the court or his attorney of any problem prior to the trial.[9] However, where a defendant attempted to establish that his failure to appear was due to his amnesia during a specified period, and the trial court's instruction essentially prevented the jury from considering the affirmative defense of the defendant's illness, since it placed the burden on the defendant of establishing that his failure to appear was unavoidable for five years, rather than for the three-month period prior to his indictment, the defendant's conviction for bail-jumping was required to be reversed.[10] Additionally, a defendant's claim that he "forgot" was not a defense to the crime of bail-jumping.[11] However, where a defendant defends on the ground that he failed to appear because he did not correctly remember the date of his scheduled court appearance, a trial judge is not entitled to infer, solely from the fact that the defendant did not double check the scheduled date, that his failure to appear on that date was willful.[12]

The dismissal of the underlying charge does not necessarily preclude a prosecution and conviction for bail-jumping.[13] Nor does the fact that the underlying charges were reduced to a misdemeanor after the defendant had been released preclude a conviction for bail-jumping.[14]

Observation:

The running of the applicable statute of limitations may bar a prosecution for bail-jumping, and, for this purpose, the crime of bail-jumping has been construed not to be a continuing crime.[15]

Footnotes

1 Richardson v. State, 699 S.W.2d 235 (Tex. App. Austin 1985), petition for discretionary review refused, (July 9, 1986) and petition for discretionary review refused, (Oct. 22, 1986).

2 Payne v. State, 21 Ark. App. 243, 731 S.W.2d 235 (1987).
A defendant failed to establish as a matter of law that he had a reasonable excuse for failing to appear, thus supporting a conviction for failure to appear; while the defendant admitted his bond maker would come and get him if he ever needed a way to get to court, he stated that he did not try to contact bond maker to get

her to take him to court even though he had ample advance notice of the court setting. Jacobs v. State, 171 S.W.3d 518 (Tex. App. Texarkana 2005).

3 People v. Lynn, 89 Ill. App. 3d 712, 44 Ill. Dec. 939, 412 N.E.2d 15 (2d Dist. 1980).

Willfulness, generally, see §§ 169, 170.

4 People v. McMillian, 174 A.D.2d 759, 571 N.Y.S.2d 782 (2d Dep't 1991).

5 Abdul-Musawwir v. State, 483 N.E.2d 464 (Ind. Ct. App. 1985).

6 People v. Birden, 86 A.D.2d 774, 448 N.Y.S.2d 66 (4th Dep't 1982).

7 People v. Branch, 19 Misc. 3d 255, 852 N.Y.S.2d 676 (N.Y. City Crim. Ct. 2007).

8 Fulton v. State, 66 So. 3d 950 (Fla. 3d DCA 2011).

9 Payne v. State, 21 Ark. App. 243, 731 S.W.2d 235 (1987).

The testimony of two defense witnesses in the defendant's trial for bail-jumping who testified they saw her the day after her court date and that she was sick, did not meet the statutory definition of uncontrollable circumstances that would excuse the defendant's failure to appear; the defendant presented no evidence that she was in the hospital because she was sick or any other similar barrier to her attendance. State v. Fredrick, 123 Wash. App. 347, 97 P.3d 47 (Div. 2 2004).

10 People v. McMillian, 174 A.D.2d 759, 571 N.Y.S.2d 782 (2d Dep't 1991).

11 State v. Carver, 122 Wash. App. 300, 93 P.3d 947 (Div. 2 2004).

12 Evans v. U.S., 133 A.3d 988 (D.C. 2016).

13 State v. Aranda, 94 N.M. 784, 1980-NMCA-130, 617 P.2d 173 (Ct. App. 1980); People v. Holcombe, 89 A.D.2d 644, 453 N.Y.S.2d 126 (3d Dep't 1982).

14 State v. DeAtley, 11 Kan. App. 2d 605, 731 P.2d 318 (1987).

15 People v. Landy, 125 A.D.2d 703, 510 N.Y.S.2d 190 (2d Dep't 1986).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 172

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

D. Criminal Liability

2. Liability Under Federal Law

§ 172. Contempt of court for breach of conditions of release

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 97(1)

Under a federal statute, a person who has been released under a federal statute pertaining to release or detention pending trial, and who has violated a condition of his or her release, is subject to, among other things, a prosecution for contempt of court.[1]

Footnotes

1 18 U.S.C.A. § 3148(a), referring to 18 U.S.C.A. § 3142.
The judicial officer may commence a prosecution for contempt if the person has violated a condition of release. 18 U.S.C.A. § 3148(c), referring to 18 U.S.C.A. § 401.

End of Document

8A Am. Jur. 2d Bail and Recognizance § 173

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

D. Criminal Liability

2. Liability Under Federal Law

§ 173. Failure to appear or surrender; “bail-jumping”

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 97(1) to 97(2.1)

A.L.R. Library

Failure of person, released pursuant to provisions of Federal Bail Reform Act of 1966 (18 U.S.C.A. secs. 3141 et seq.), to make appearance as subjecting person to penalty provided for by 18 U.S.C.A. sec. 3150, 66 A.L.R. Fed. 668

What is proper venue under Rule 18 of the Federal Rules of Criminal Procedure for offense of bail jumping, 52 A.L.R. Fed. 901

By federal statute, one who has been released under the federal statutory provisions regarding release and detention pending judicial proceedings, and who knowingly fails to appear before a court as required by the conditions of release, or fails to surrender for service of sentence pursuant to a court order, is subject to fine, imprisonment, or both.[1]

Observation:

The offense described by this provision has sometimes been referred to as the offense of “bail-jumping.”[2]

The constitutionality of the part of the provision fixing punishment has been upheld, despite contentions that it constituted a bill of attainder and violated the Due Process Clause of the Fifth Amendment.[3] Furthermore, various double jeopardy clause claims with regard to a defendant's conviction and sentence for willful failure to appear for conviction have been rejected.[4]

Practice Tip:

Regarding bail-jumping, venue may be in both or either of the districts where the defendant was indicted or where he or she was found and bail set.[5]

It has been said that if a person has been released on bond in connection with a felony charge, the failure to appear or failure to surrender is a felony offense, but that violation of a bond condition is not otherwise itself a criminal offense.[6] Even so, however, breach of a condition also subjects one to prosecution for contempt under the applicable federal statute.[7]

Footnotes

1 18 U.S.C.A. § 3146(a), referring to 18 U.S.C.A. § 3146(b).
The term of imprisonment imposed is consecutive to the sentence of imprisonment for any other offense. 18 U.S.C.A. § 3146(b)(2).
A defendant could not be convicted for failure to appear “as required” on the original trial date, despite his fugitive status, in that the trial had been continued and thus the defendant was not required to appear. U.S. v. Fisher, 137 F.3d 1158 (9th Cir. 1998).

2 U.S. v. Cestero, 767 F. Supp. 500 (S.D. N.Y. 1991); U.S. v. Williard, 726 F. Supp. 590 (E.D. Pa. 1989), judgment aff'd, 914 F.2d 245 (3d Cir. 1990).

3 U.S. v. Van Horn, 798 F.2d 1166 (8th Cir. 1986), referring to 18 U.S.C.A. § 3146(b).

4 U.S. v. Mack, 938 F.2d 678 (6th Cir. 1991) (holding that the prohibition against double jeopardy was not violated when the defendant was indicted for failure to appear for sentencing, even if such conduct had been previously considered in imposing sentence under the Sentencing Guidelines for conspiracy to distribute cocaine, where there was no evidence that the failure to appear for sentencing had any element in common with distributing cocaine); U.S. v. Bolding, 972 F.2d 184 (8th Cir. 1992) (holding that the double jeopardy clause did not prohibit the defendant's subsequent conviction and sentence for willful failure to appear for sentencing in his drug trafficking case when defendant had already received a sentence on the underlying drug charge which was enhanced for his failure to appear, where the district court appropriately avoided any double counting by reducing the sentence for failure to appear in an amount commensurate with the previous enhancement).

5 U.S. v. Cestero, 767 F. Supp. 500 (S.D. N.Y. 1991), holding that where, in a bail-jumping case, bail conditions set in Puerto Rico were imposed to assure the defendant's presence in a district of New York and, thus, the defendant's refusal to comply with those conditions affected matters in New York, venue, therefore, was properly set in New York.

6 U.S. v. Evans, 886 F. Supp. 800 (D. Kan. 1995).

7 § 172.

End of Document

8A Am. Jur. 2d Bail and Recognizance § 174

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

D. Criminal Liability

2. Liability Under Federal Law

§ 174. Failure to appear or surrender; "bail-jumping"—Elements of proof

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 97(3) to 97(5)

To establish a violation of the federal statute[1] making the knowing failure of one released under the federal provisions as to release and detention pending judicial proceedings to appear or surrender a criminal offense, the government must ordinarily prove that the defendant (1) was released pursuant to that statute, (2) was required to appear in court, (3) knew that he or she was required to appear, (4) failed to appear as required, and (5) was willful in his or her failure to appear.[2] Evidence of notice sent to the defendant has been considered as evidence that he or she "knowingly" failed to appear on the designated date of his or her appearance.[3] However, for purposes of conviction of failure to appear under the statute, the government is not required to prove the defendant's actual knowledge of the trial date if the defendant engages in a course of conduct designed to avoid notice of such date.[4]

Footnotes

1 18 U.S.C.A. § 3146.

2 U.S. v. McIntosh, 702 F.3d 381 (7th Cir. 2012); Weaver v. U.S., 37 F.3d 1411 (9th Cir. 1994).
A defendant's failure to comply with a supervised release order requiring him to be on 24-hour-per-day placement at a community treating center prior to sentencing constituted a "willful" failure to be available to receive notice of and be available for any court proceedings that might be scheduled, and thus was sufficient to sustain a conviction for failure to appear at a court proceeding called for the purpose of inquiring into his whereabouts. U.S. v. Simmons, 912 F.2d 1215 (10th Cir. 1990).

3 U.S. v. Martinez, 890 F.2d 1088, 29 Fed. R. Evid. Serv. 418 (10th Cir. 1989), holding, in a prosecution for failure to appear, that the evidence was sufficient for the jury to find beyond a reasonable doubt that the

defendant "knowingly" failed to appear on the designated date, in light of letters from both the district court clerk and his attorney mailed to the address which he had given at the time of release.

4 Weaver v. U.S., 37 F.3d 1411 (9th Cir. 1994), where the defendant had undisputed knowledge that he was to go to trial at some point, had failed to appear on the actual date set for trial or any other date that the defendant could plausibly have believed was the correct trial date, and had failed to keep in regular contact with the pretrial services office as required by his release, which showed an active effort on the defendant's part to avoid learning of the correct trial date.

Evidence that a release order directed a defendant to appear on a specific date at a particular place and time, and that the defendant failed to appear before the judicial officer for three years and used an alias, was sufficient to establish that the defendant willfully failed to appear, in violation of the Bail Reform Act, despite evidence that the release order did not contain specific information regarding the time and place defendant was to appear before the judicial officer. U.S. v. Stewart, 104 F.3d 1377, 46 Fed. R. Evid. Serv. 300 (D.C. Cir. 1997).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 175

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance
Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

D. Criminal Liability

2. Liability Under Federal Law

§ 175. Failure to appear or surrender; "bail-jumping"—Defenses; uncontrollable circumstances

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 97(3) to 97(5)

It is an affirmative defense to a federal prosecution for bail-jumping that uncontrollable circumstances prevented the person from appearing or surrendering, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear or surrender, and that the person appeared or surrendered as soon as such circumstances ceased to exist.[1] The term "circumstances" for purposes of the uncontrollable circumstances defense to liability for knowing failure to appear or surrender under the applicable statutory provision, fall into two categories—physical and mental, the latter best characterized as duress.[2] In this regard, uncontrollable duress, to excuse a defendant's failure to appear for sentencing, must be sufficient to produce unavoidable fear of serious bodily injury or death.[3]

A defendant's fear of deportation has not been considered an "uncontrollable circumstance" justifying his failure to appear after his release on bail.[4] A desire to make a political statement or engage in a protest activity that is not directly related to the federal bail-jumping statute itself is not an uncontrollable circumstance.[5]

Courts have looked to a traditional duress and necessity analysis in interpreting the uncontrollable circumstance defense of the statute.[6]

Footnotes

1 18 U.S.C.A. § 3146(c).

2 U.S. v. Veilleux, 40 F.3d 9 (1st Cir. 1994).

3 U.S. v. Veilleux, 40 F.3d 9 (1st Cir. 1994).

4 U.S. v. Odufowora, 814 F.2d 73 (1st Cir. 1987).

5 U.S. v. Springer, 51 F.3d 861 (9th Cir. 1995), referring to 18 U.S.C.A. § 3146.

6 U.S. v. Corona, 687 F. Supp. 84 (S.D. N.Y. 1988), order aff'd, 868 F.2d 1268 (2d Cir. 1988).

End of Document

8A Am. Jur. 2d Bail and Recognizance § 176

American Jurisprudence, Second Edition | May 2021 Update

Bail and Recognizance

Karl Oakes, J.D.; and Marie K. Pesando, J.D.

IX. Enforcement of, Sanctions and Criminal Liability for Violation of Bail Conditions; Revocation of Bail

D. Criminal Liability

2. Liability Under Federal Law

§ 176. Commission of offense while released

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bail 97(5)

Under federal law, a person convicted of an offense committed while released must be sentenced, in addition to the sentence prescribed for the offense to a term of imprisonment of not more than 10 years if the offense is a felony;[1] or a term of imprisonment of not more than one year if the offense is a misdemeanor.[2] This statute does not create a separate offense but is merely a sentence enhancement provision.[3] The statute can be applied where the subsequent offense was committed in a district other than the district where the defendant had previously been released on bond.[4]

The statute has been held not to be applicable to a defendant convicted of contempt of court under the federal statute authorizing a contempt prosecution for a breach of bail bond conditions, it being stated that the enhancement provision, with its mandatory sentencing provisions, applies only to individuals who have been released on bail and who commit a subsequent, separate and distinct criminal offense, not related to the specific terms and conditions of release on bail.[5] In this regard, the rule of lenity has been held to foreclose the imposition of sentence enhancement for the commission of the offense of failing to appear while under pretrial release, since the enhancement statute failed to address whether Congress intended to enhance penalties only for the commission of separate and distinct crimes not related to the terms and conditions of release.[6]

Practice Tip:

It has been said that a defendant cannot be subjected to a mandatory consecutive sentence pursuant to the provision for committing a crime while on bail after being sentenced on a felony conviction in another case, where he was not notified at the time of his

release or at any time thereafter prior to the commission of the subsequent crime that he would receive such a sentence for an offense committed while on release.[7] However, an additional, consecutive sentence has been held to have been properly imposed on a defendant convicted of an offense committed while released on bond, though the releasing court did not provide specific notice by citing the relevant statutory provision under which an additional penalty could be imposed, where the defendant signed release papers informing him of the potential penalties.[8]

Footnotes

1 18 U.S.C.A. § 3147(1).

2 18 U.S.C.A. § 3147(2).
A term of imprisonment imposed under the statute will be consecutive to any other sentence of imprisonment. 18 U.S.C.A. § 3147.
A term of enhancement under 18 U.S.C.A. § 3147 for an offense committed while on release under the Bail Reform Act runs consecutively to any other term of imprisonment, even if that term was not imposed for the offense committed on pretrial or presentence release. U.S. v. Galliano, 977 F.2d 1350 (9th Cir. 1992).

3 U.S. v. Di Pasquale, 864 F.2d 271, 110 A.L.R. Fed. 669 (3d Cir. 1988); U.S. v. Jackson, 891 F.2d 1151 (5th Cir. 1989); U.S. v. Sink, 851 F.2d 1120 (8th Cir. 1988); U.S. v. Patterson, 820 F.2d 1524 (9th Cir. 1987).

4 U.S. v. McCary, 14 F.3d 1502 (10th Cir. 1994).

5 U.S. v. Jones, 1986 WL 12711 (S.D. N.Y. 1986) (referring to the provisions of 18 U.S.C.A. § 3148).

6 U.S. v. Lofton, 716 F. Supp. 483 (W.D. Wash. 1989).

7 U.S. v. Fredericks, 725 F. Supp. 699 (W.D. N.Y. 1989), referring to 18 U.S.C.A. § 3147.
Court acts of notifying the defendant that a felony conviction while on bond could result in his sentence being increased from between two and 10 years provided adequate notice to the defendant to permit enhancement of his sentence in a later case, even though a subsequent statutory amendment narrowed the sentencing judge's discretion, since the subsequent amendment did not cause the information provided by the courts to become false. U.S. v. Sturman, 49 F.3d 1275 (7th Cir. 1995).

8 U.S. v. Lewis, 991 F.2d 322 (6th Cir. 1993).

End of Document